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| Tiivistelmä/Referat – Abstract <p>This thesis discusses an alternative interpretation of the ethical theoretical system established by Immanuel Kant – the Kantian Nonideal Normativity; and assesses the morality of nuclear related practices conducted by parties in the North Korean Nuclear Security Complex.</p> <p>This thesis interprets Kantian moral philosophy from a double-level perspective, indicating that while Kantian ideal theory is presenting an ideal moral goal for human beings to live up to in an ideal world; Kantian nonideal theory works as practical guidance in nonideal circumstances to maximally approach the ideals for historical human development.</p> <p>This thesis assesses the morality of North Korea's acquiring nuclear military capability on the right of self-defence. It examines domestic analogies of the right of self-defence as the grounding of national defence, the right to lie in specific circumstances, and the partial state of nature; argues that the acquisition of nuclear military capability is morally permitted in a specific circumstance under strict conditions. Contemporary North Korean history after Korean War was examined to determine the conditions North Korea had been in when it developed its nuclear capability. First key finding of this thesis is that North Korea is morally permitted to acquire nuclear military capability in order not to become a means.</p> <p>Second key finding is that the punitive actions done to North Korea by other parties in the Complex aiming its nuclear capability acquisition are to be morally scrutinized for violation of duty of nonintervention. North Korea is entitled to its right of nonintervention as it does not belong to either categories of exception. Its violation of NPT cannot be the excuse for other actors to violate their moral duties. And punitive actions should not be used by states to seek their own ends.</p> <p>The moral obligation for North Korea and the US to join a union of states constitutes the third key finding of this thesis. The decision to join must be an autonomous one. The establishing of such union is the key to solving the nuclear issue in Korean Peninsula.</p> <p>Kantian morality is exceptionally strict in keeping peace among states, yet it holds even higher freewill and justice. Kantian perpetual peace does not come from unilateral disarmament of several states, but from a systematic change of nuclear mindset and current non-proliferation institution.</p> | | | |
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Kantian Nonideal Normativity and North Korean Nuclear Security Complex

University of Helsinki

Faculty of Social Science

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Master's Thesis

Author: Wei Wei

Supervisor: Heikki Patomäki

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Contents

| | |
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| 1. Introduction | 1 |
| 2. What is Kantian Nonideal Theory and its Role in International Politics | 3 |
| 3. The Right of Self-Defence..... | 8 |
| 3.1. Some References | 8 |
| 3.2. Domestic Analogies, the Right to Lie, and the State of Nature..... | 11 |
| 3.2.1. Domestic Analogies..... | 13 |
| 3.2.2. The Right to Lie..... | 15 |
| 3.2.3. The State of Nature..... | 16 |
| 3.3. Kantian Nonideal Theory on National Defence | 21 |
| 3.4. Acquiring and Stockpiling Nuclear Weapons | 23 |
| 3.5. Nuclear Deterrence: On Militaries and On Civilians | 24 |
| 4. National Defence and North Korea Nuclear Security Complex..... | 30 |
| 4.1. The De Facto At-War Status, The Nuclear Threat, and The Life Threats..... | 30 |
| 4.2. Three Tools of War | 33 |
| 4.3. Pushed Further On The Path..... | 35 |
| 4.4. Moral Assessment of North Korea's Current Practice | 37 |
| 5. The Duty of Non-Intervention..... | 43 |
| 5.1. Conceptualizing Intervention | 43 |
| 5.2. Cases of Exception and Their Grounds | 44 |
| 5.3. North Korean Nuclear Security Complex and The Duty of Non-Intervention..... | 48 |
| 6. The Obligation to Join a Union of States | 51 |
| 6.1. North Korean Governing Strategy and the Obligation to Join A Union | 52 |
| 6.2. The Non-Proliferation Treaty | 53 |
| 6.3. The US-DPRK Relations Normalization..... | 55 |
| 7. Conclusion..... | 56 |
| Abbreviations | 62 |
| Reference..... | 63 |

1. Introduction

The attention that had been given to normativity of morality in both international political practice and academia is less in proportion to its importance. Before we rush to find out ways to bring about justice, it is necessary to first make clear the truth of justice – how should justice be; why should it be like such; and according to what should justice be as such. That is what normativity of morality can be hoped to bring for issues of international relations.

North Korean Nuclear Security Complex, along with the problems it brings about and is interwoven with, has baffled international relations scholars for decades. The relations and power balance between North Korea and South Korean, and with global and regional powers like the US, China, Japan, Russia; the power game and cooperation among these powers over North Korean nuclear issue; the collective security of Northeast Asian region; moral legitimacy of North Korea's acquisition and possession of nuclear weapons; the justification of withdrawal from the Non-Proliferation Treaty, and the legitimacy of the Treaty itself, all these problems along with others intertwined with each other, causing and resulting in one another. To comb through this deadlock of issues, a context-independent, fundamental, and normative philosophical theory is needed as guidance. In this dissertation, Kantian political philosophy as a nonideal theory of moral normativity is to be employed for such a role.

Immanuel Kant's moral laws and political philosophy has made an astonishing come back in the realm of international relations and international rights in recent years. The philosophical claims he made in 18th century Europe have been reinterpreted in the context of 21st century international politics, therefore have provided guidance and theoretical support for several modern IR theories aiming to tackle problems that only exist in our contemporary world. Furthermore, when rereading Kant's literature, scholars distinguished two theories in Kant's moral theoretical system – ideal theory and nonideal theory. They conceptualized the relations of these two theories in different ways, as two different levels of Kantian

theory¹, or as two forms of Kantian normativity², or as two theories that govern two worlds³, yet one thing is certain – they all suggested such distinction when interpreting Kant's work.

In this dissertation, the moral legitimacy of some key practices within North Korean Nuclear Security Complex will be analyzed in the perspective of Kantian nonideal theory. First, I attempt to point out the distinctive features and different understandings of Kantian nonideal theory; incorporate them and uncover the principal clue of the relation between Kantian nonideal theory and Kant's ideal philosophy; then giving out a reasonable description of what is meant by Kantian nonideal theory. This would be the main content of chapter two.

With the following sections, I first apply the interpretation of Kantian nonideal theory on the context of North Korean nuclear issue, by arguing North Korea has the moral legitimacy to acquire nuclear weapons in an unjust, nonideal circumstance, with strict restrictions regarding its handling and intentions with them – in chapter three, I intend to take up Doyle's analysis as a reference – Doyle suggested that in the perspective of Kantian nonideal theory, Iran is morally permitted to utilize nuclear deterrence for the necessity of national defence and therefore permitted to acquire nuclear weapons for the credibility of such deterrence, even though the NPT forbids it. I shall first examine Doyle's argument and conclusion in my own terms; point out the problems existing in the process of his inquiry along the way; modify his assumptions; conclude the examination by bringing forth a modified assessment with adjusted conditions and terminology. Together with the revised assessment there is normative analysis on the process of acquiring and stockpiling nuclear weapons, and the detailed assessment on nuclear deterrence on militaries and civilians, as a complement of the assessment.

In chapter four, the historical context of North Korean Nuclear Security Complex is introduced; and relevant context and facts are invoked as evidence to assess the morality of policies related to the Complex and the practices taken up by the parties within it. I will illustrate the historical interactions among parties within the Complex and how North Korea's decision of acquiring nuclear military capability should be

¹ De Federicis, 2013., p. 1. Also see Korsgaard, 1996., p. 153

² Horn, 2016., p. 91.

³ Doyle, 2010., p. 100.

deemed as morally permissible.

For chapter five I will introduce another right in Kantian morality system – the right of non-intervention. I first conceptualize the term of intervention; then enumerate the cases of exception where interference would not be deemed as violation of duty of non-intervention, and explicate their groundings as exceptions. Then I will explain how North Korea does not belong to either cases of exception therefore shall boast its full right of non-intervention. Hence incorporated with the context of the Complex, we can come to the conclusion that all punitive actions done based on North Korea's decision of acquiring nuclear military capability should be morally scrutinized for the violation of North Korea's right of non-intervention. Violation of morality on the DPRK's side does not excuse another violation of morality from any other international relations actor. And the actions of punishment cannot be used as a means by other states to seek their own ends.

The obligation for states to join a union of states is discussed in chapter six. I first introduce North Korea's state governing strategy and guiding ideology Juche; then explain how self-reliance – as the essence of Juche ideology – has long been North Korea's state governing mentality and constitutionalized guidance. Although joining a union of state is considered an obligation and immediate duty for a state, the decision for a state to join must be a voluntary and autonomous one. Then I discuss the Non-Proliferation Treaty and the potential institutional subversion it has suffered from. I acknowledge North Korea's right and morality in deciding to withdraw from the Treaty, and question the viability for North Korea to rejoin the NPT, should it desire to show its commitment to global nuclear disarmament. At the end I talk about US-DPRK relations normalization, how this might be the only union of states North Korea is interested in joining currently and how such normalization is crucial for solving the North Korea nuclear crisis.

Chapter seven concludes.

2. What is Kantian Nonideal Theory and its Role in International Politics

In his work *The value of philosophy in nonideal circumstances*, Adam Swift gave

compelling clarification on the role of philosophy in unjust, nonideal circumstances. He suggested that the goal for doing political philosophy would be to know or understand the truth about justice rather than to motivate action towards it, thus the aim is epistemological, not practical.⁴ The role he believed to be assigned to philosophy is twofold – to analyze various values at stake, and to judge the relative value of said values.⁵ Not only do we need political philosophy as guidance – along with social sciences as measures – for developing policy options for our current circumstances, we also look towards pure philosophy that is independent to context as action guidance for choosing from those options and the reasons backing such choice.

Christine Korsgaard sketched a systematic depiction of the relations between Kant's theory as an ideal and Kantian nonideal theory by drawing from John Rawls's strategy in a division of moral philosophy. In her work *The right to lie: Kant on dealing with evil*, she suggested that Kant's moral law sets "a high ideal of conduct and tells us to live up to that ideal regardless of what other persons are doing"⁶, the result of which could turn out catastrophic. Therefore special principles are needed for dealing with evil or complexity in evil circumstances; and a certain structure must be in place in order for an ethical system to accommodate such special principles; and she proposed such structure for Kant's theory as a double-level theory in which Kant's moral law as the ideal and the special principles for evil circumstances as Kantian nonideal theory.⁷

Korsgaard proposed that Kantian moral theoretical system could be seen as governing two worlds – one is an ideal world that is a perfectly just society, in which everyone act justly and their actions and ends are completely determined by reason; and its historical, economic, and natural conditions are such that realization of the ideal is feasible; and there are no massive historic injustices needed to be corrected. The other world is a nonideal world in which there is non-compliance, punishment, war, opposition to unjust regimes, and compensatory justice; and there will be certain natural conditions or other circumstances in this world making the full realization of a just state of affairs impossible. In the first world, Kant's ideal theory is applied; for the second world, Kantian nonideal theory is applied – the nonideal theory is not

⁴ Swift, 2008., p. 366.

⁵ Ibid, p. 369.

⁶ Korsgaard, 1996., p. 133.

⁷ Ibid, p. 135; p. 147.

applied without regard to circumstances – it is applied in the nonideal circumstances.⁸

The relations between these two theories could be seen as such: on the one hand, in figuring out how to achieve the ideals such as justice, equality, and peace in ideal circumstances, people can determine, in light of such ideal theory, what is to be done in actual circumstances.⁹ In nonideal circumstances, when ideals cannot be realized effectively, then they, and the ways to realize them in the ideal circumstances, become a goal, rather than something to live up to; and people should work toward the conditions that make realizing them feasible. On the other hand, the nonideal theory can tell us which of our nonideal options is least bad, and closest to ideal conduct. If some temporary inequality or injustice does in fact facilitate the realization or at least the approaching the realization of the goal, they will be allowed, in the condition that they do not violate the “general conception”¹⁰ – that is the formula of universal law in Kantian moral system¹¹. In sufficiently bad circumstances, even acting according to nonideal theory cannot get us anywhere near ideals, the absolute minimum requirement would be not to violate the formula of universal law.¹² In *Groundwork of the Metaphysics of Morals*, Kant introduces the formula of universal law as the only categorical imperative:

There is, therefore, only a single categorical imperative and it is this: act only in accordance with that maxim through which you can at the same time will that it become a universal law.¹³

Categorical imperatives can be best seen as the basis of all the moral duties in Kant’s ethical system; therefore the formula of universal law is the groundwork principle that underlies the other moral laws in Kantian moral system, such as the formula of humanity and the kingdom of ends, which are derived from the formula of universal law.¹⁴

Christoph Horn attempted to explain why Kant’s political normativity appears so different from his moral one. He suggested a new way of interpreting Kant’s work, in which he pointed out that according to Kant, the type of normativity being applied in

⁸ Ibid, pp. 147 – 148.

⁹ Ibid, p. 148.

¹⁰ Ibid., p. 148.

¹¹ Ibid., p. 151.

¹² Ibid., p. 153.

¹³ Kant, 1998 (1785)., p. 31 (AA, 4:421).

¹⁴ Ibid., p. 37 (AA, 4: 429), p. 41 – 42 (AA, 4: 433 - 434).

the political realm is in fact different yet still somehow connected with his moral law.¹⁵ He emphasized that Kant has repeatedly identified in his multiple works that reason is the basis and the source for his moral normativity as well as his political philosophy.¹⁶ Horn proposed that Kant indicated the practical reason generates two forms of normativity, the one ideal, the other nonideal¹⁷; and Kant's political philosophy – the theory of his political and legal normativity – can be taken as an attenuation of his moral normativity, in the sense of a non-ideal theory.¹⁸ Kantian non-ideal theory can be seen as an attempt to “weaken full-blown normativity in the face of sub-optimal circumstances”, make it usable in practice without surrendering too many fundamental claims.¹⁹ And such non-ideal normativity does not only serve as an application of Kant's moral conception in unjust, nonideal circumstances, but more importantly a moral guidance in political realm that can be followed durably:

Kant has formulated a non-ideal form of normativity, according to which ‘non-ideal’ means : a weaker version of normativity which can be lived up to by human beings, which is appropriate to specific situations and which is intended for long-term effect, namely that of a historical development.²⁰

Horn indicated that nonideal theory allows in-between stages from the complete surrender of moral demands to the requirement of their full implementation.²¹ The nonideal normativity is a long-term approximation of the ideal one²²; and the principles of morality and of political reality are antagonistic only when “one tries to obey the norm ‘with impetuosity’”²³. Hence, the normativity matching historical expectation can only be of “a non-ideal, reduced, practicable form suitable for specific situations”²⁴.

From above we could try to summarize the distinctive features of Kantian nonideal theory and propose a definition for it. First of all, Kantian nonideal theory is generated from practical reason, which is also the sole base of Kant's moral theory. Kantian nonideal theory is different from his ideal morality, the difference is apparent; yet as

¹⁵ Ibid., p. 89.

¹⁶ Horn, 2016., p. 92.

¹⁷ Ibid., p. 92.

¹⁸ Ibid., p.91.

¹⁹ Ibid., p.100.

²⁰ Ibid., p.91.

²¹ Ibid., p. 101.

²² Ibid., p. 102.

²³ Ibid., p. 105.

²⁴ Ibid., p. 105

they are generated from the same source, they are connected inevitably. Second, Kantian nonideal theory is applied in nonideal circumstances, which is our current world. To employ nonideal theory instead of ideal theory in nonideal circumstances, according to Kant, can bring us closer to the ultimate pursuits of humanity. Third, Kantian nonideal theory has weaker moral requirements toward its follower than the ideal theory. It allows middle ground between the full-scale conformity of moral requirements and the total abandonment of them; therefore it is practically applicable for long-term human development.

Both Kant's moral normativity and Kantian nonideal theory are for the purpose of seeking the truth of the holy grail of human development – justice, perpetual peace, equality, freedom, and so forth. Kant's understandings of what to do in ideal circumstances to achieve and maintain the supreme goals of humanity consist his moral normativity; also shed light on what Kant thinks humans should be in nonideal circumstances, which give rise to Kantian nonideal theory. These two together constitute Kantian ethical theoretical system. Thus we could define Kantian nonideal theory as follows: it is a part of Kant's ethical system; it is modified from Kant's ideal moral theory in a way that it works as a guidance in nonideal circumstances to maximally approach the ideals for historical human development.

Both ideal and nonideal theory of Kant have tremendous value for international political practice and theoretical development. We could develop from Swift's assignment on philosophy and Korsgaard's idea of ideal being the goal to seek, and suggest that while Kant's ideal theory works as a lighthouse in current world, Kantian nonideal theory works as a road map – to come up with options and to rank the options for a specific social or political situation – including a situation like the North Korean Nuclear Security Complex. As Swift explicated, when we are confronted by the real world, as social science tells us the feasible set of short-to-medium term policies for making the world more just we will still need philosophy to evaluate, rank, and opt from the set; and to orient ourselves in developing long-term policies.²⁵ We could see from the above the potential of Kantian nonideal theory serving as the philosophical orientation for long-term development of human society.

We can see that Kantian nonideal theory is such a moral normativity that can

²⁵ Swift, 2008., p. 375.

facilitate human beings with the making of short and medium term policies in political realm as well as other real-life circumstances which are almost always far from perfect. It can be used to direct us towards a world that is generally more just in a way that it gives out a collection of viable alternatives according to the specificity of the situation and prioritizes them, along with logical reasons for generating and sorting this collection. It preserves what Kant deemed the most crucial for mankind in morality – justice and the honoring of rights – while reality is too difficult for other virtues to be redeemed.

In the following I will try to cull from the works of Kant and works of scholars interpreting his works the pertinent arguments of Kantian nonideal theory, with which could be used to analyze the moral situations of North Korean Nuclear Security Complex, and the policies and practices employed by the related parties of it.

3. The Right of Self-Defence

3.1. Some References

T.E. Doyle examined the ethical problem regarding the potential Iranian Proliferation Complex drawing from Kantian nonideal theory. He started by criticizing the focus on contemporary non-proliferation policy should be on incentives and expectations instead of the current practice that is strategy and technology leaning, which ought to be approached from a political/moral angle. He moved on by suggesting that nuclear ethical analysis should not rely only on the ideal moral theories, for the reason that their application and misapplication reinforce the perception that morality is irrelevant to politics and political inquiry. Rather, the research regarding nuclear ethics should carefully consider the nonideal moral principles “whose aim is to alleviate national, regional or global insecurity, and/or realize a greater measure of international justice while not insisting that each and every injustice is addressed all at once.”²⁶ Then he proposed Kantian nonideal theory as the stance best addressing the issue in question as he argued that Kant is the only

²⁶ Doyle, 2010., p. 90.

great thinker to put peace among states and peoples as a fundamental principle of philosophy; and Kant's unusual rigorism in moral requirements could help certain inquiries regarding nuclear ethics achieve methodological parsimony.

Doyle stated that Iran was trapped in a security dilemma – it is an NPT signatory, yet the hostility from Sunni states, Israel and the United States convinced it that nuclear weapons is the only effective deterrence against attacks on it. He explicated then how the wrongful intentions principle and the principle of the morality of social institutions – the two major principles employed by Kantian ideal ethicists, as well as their realist critiques, could all be unsuitable or even dangerous for contemporary nuclear policy making. Following, Doyle proposed Kant's views on self-defence for individuals and for nations as the first source drawn from Kantian nonideal theory.

He started by claiming self defence in Kantian sense is best understood as a reciprocal relation by invoking Kant's formula of humanity as support. Kant's formula of humanity dictates the following: *So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means.*²⁷ Then he demonstrated two cases both of which the condition constitutes as nonideal – when state authority is incapable of protecting individuals from criminal attacks, and when one's life is under direct harm by another. He went on with Kant's justification of lying as a means of self-defence and distinguished Kant's implication that although it is categorically prohibited to violate the rights of humanity, it might be necessary sometimes to put them at risk. He furthered the argument indicating that a well-meaning lie told in self-defence has different implications for moral and legal responsibility than one used in the defence of another, for successful lying in self-defence deters and prevents wrongdoing committed on oneself without violation of the aggressor's rights. And this type of lie sheds light on the domestic analogies for the nuclear self-defence of states. Doyle concluded his argument on self-defence by incorporating the above and formulating a corollary maxim: "use only those modes of self-defense that remain within the bounds of reciprocity as conditioned by a wrongdoer's offense."²⁸

Doyle commenced his examination on Kant's national defence under anarchy conditions by suggesting Kant regards the duties of public right as a condition

²⁷ Kant, 1998 (1785)., p. 38 (AA, 4: 429).

²⁸ Doyle, 2010., p. 99.

necessary to the construction of long-term security and peace. Following, he suggested that Kant contends in an international state of nature, every state has the right to go to war, which is identical to self-defence right. Doyle identified his point of inquiry between Kant's permission of standing armies as a temporary instrument to deter or respond proportionally to aggression, and Kant's proscription of hostile act that would destroy mutual trust beyond redemption.

Doyle invoked Kant's formula of universal law as his second source of nonideal theory. He attempted to examine national defence by means of deception with this formula by first elaborated on the reasons for the Formula is to be obeyed by its addressees even against their inclination; then established that the Formula is the unyielding bottom line drawn beyond which any claim of violation of duty is unjustified. He continued by arguing that morality in nonideal conditions permits deception even though general morality proscribes it – it is permitted to keep autonomy rights from being trod underfoot by liars and assailants.

On applying Kantian nonideal theory to contemporary nuclear proliferation, Doyle started by emphasizing that right to go to war should entail the right to threaten to go to war, which includes the right to acquire the armaments needed for warfare. Then he indicated that to morally assess the nuclear aspirant's pursuit on nuclear weapons, first we need to morally assess its deterrent intentions against its rival. Doyle did it by dividing its intentions into "carry out" and "never carry out", and its threatening targets into "military centers" and "population/government centers", enumerated all the possible combinations of these divisions, and examined the combinations with the formula of universal law. After rejecting the maxim of overkill and the maxim of strict nuclear reciprocity, Doyle suggested that carrying out the deterrent threats strictly against military centers is permissible by Kantian nonideal theory, given that carrying out the threats would not lead to a counterforce escalation that entailed massive collateral damage. He also went into detailed examination with another combination – carrying out strikes on military centers while threaten but never intend to strike population/government centers. By invoking Kant's sixth Preliminary Article that proscribes acts of hostility which would make mutual trust impossible in future peace, Doyle rejected this combination arguing that the promise of harm conveyed by the lie will cultivate enmity and made trust building impossible.

Doyle concluded his work by giving out the Kantian nonideal moral assessment regarding Iran's potential acquisition of nuclear weapons. He contended that as a persuasive nuclear deterrent lie is necessary for national defence, Iran, among other nuclear aspirants would be morally permissible to acquire nuclear weapons even though the NPT forbids it, in order to establish the credibility of the threats.

3.2. Domestic Analogies, the Right to Lie, and the State of Nature

Kant in *Groundwork of the Metaphysics of Morals* introduced The formula of universal law as a law that determines the absolute good will without limitation, without regard to any effect that might come with.²⁹ Kantian scholars acknowledged that the formula of universal law as the one moral guideline that tells us what we must not in any case, even the worst circumstances, do³⁰; that it “draws a line beyond which no claim of exclusion or suspension from duty is justified”³¹; and it “provides the point at which morality is uncompromising”.³² That means, even when facing non-compliance with moral, civil, and international legal requirements – that is, in the contexts of evil – one must act in accordance with the formula of universal law.

When explicating the formula of universal law and enumerating examples for division of perfect and imperfect duties, Kant expounded that self-love is to be a universal law by counterarguing the opposite: “It is then seen at once that a nature whose law it would be to destroy life itself by means of the same feeling whose destination is to impel toward the furtherance of life would contradict itself and would therefore not subsist as nature”.³³ Therefore, preserving one's physical wellbeing should be seen as in accordance with the formula of universal law; and it falls in the category of perfect duty to oneself as it is “the right of humanity in our own person”³⁴. Further, Kant listed preserving oneself in nature as the first (though not the principle) perfect duty of a human being within the doctrine of virtue in *the Metaphysics of Morals* (MM).³⁵ It is clear that Kant regards preserving oneself as the fundamental moral duty of human being; it is when preserving oneself comes with a price of

²⁹ Kant, 1998 (1785)., p. 14(AA, 4:402), p. 31 (AA, 4:421).

³⁰ Korsgaard, 1996., p.154.

³¹ Doyle, 2010., p. 103.

³² Korsgaard, 1996., p. 154

³³ Kant, 1998 (1785)., p. 32 (AA, 4:422).

³⁴ Kant, 1996 (1797)., p. 32 (AA, 6:240)

³⁵ Kant, 1996 (1797)., p. 176 (AA, 6:421).

harming others, does the situation become tricky.

Kant included the right of necessity into the doctrine of right, as ambiguous right. In explicating the right of necessity, Kant recognized the right to ethically blameless self-defence on the attempt to deprive the culprit's life when he is issuing a "wrongful assailant upon [one's] life". On the contrary, Kant indicated that taking the life from an innocent man, that is from whom did nothing to harm one's life, in order to preserve one's life is only unpunishable, but not inculpable – that is, a right of necessity but ethically blamable.³⁶ In *Theory and Practice* Kant went on elucidating that necessity can only exist in a case where there is a conditional duty in conflict with an unconditional duty. To preserve one's life is only conditional duty, while not to take an innocent life (innocent in the sense as he has committed no offense against one's life) is an unconditional duty. Yet, the deed of saving one's life by violence is not punishable by death because it would be absurd to threaten one's life if he did not voluntarily give up his life.³⁷

From this we could deduce that it is blameless and in accordance with the universal law that one exercises lethal self-defence on the culprit when one's life is under direct attack by said culprit; but the violence of one's self-defence is only permissible to apply on the culprit, as doing harm to an innocent man to save one's own life is not permissible in Kant's both ideal theory and non-ideal theory. As the duty of self-defence of individual person could be the basis "from which we draw tentative 'domestic analogies' for national defense" according to Doyle³⁸, and "sovereign is a morally sensitive person" according to Horn³⁹, plus that Kant recognized most states as 'moral persons'⁴⁰, we could deduce that the violence of one state's self-defence is permissible when under attack, only against some parts of the perpetrating state(s), which are directly inflicting the attack, but never to non-participating state(s). For how to determine the proper degree of self-defence, Doyle's interpretation of self-defence as "reciprocal or mutual relation"⁴¹ renders the decision – "use only those modes of self-defence that remain within the bounds of reciprocity as conditioned by

³⁶ Kant, 1996 (1797)., p. 27 – 28. (AA, 6:235 – 6:236)

³⁷ Kant, 1991., p. 81 notes (AA, 8:300n).

³⁸ Doyle, 2010. p. 97

³⁹ Horn, 2016., p. 108.

⁴⁰ Cavallar, 2001. p. 240. Also see Kant, 1996 (1797)., p. 114 (AA, 6:343).

⁴¹ Doyle, 2010. p. 98.

a wrongdoer's offense."⁴²

Of equal importance is the right to go to war and the right of prevention introduced in the doctrine of right as a right of nations in MM. Kant recognized the right for a state to go to war in the state of nature.⁴³ The conditions to permit the prosecution of the right include that the state believes it has been wronged by the other state; or the state is threatened by active violations of first aggression from the other state. The threats of active violations include the other state being the first to undertake preparations, or the menacing increase in the other state's power.⁴⁴ Merely the condition of the superior power is a wrong to the lesser power even before the former commits any deed; and this alone can be the legitimate ground for an attack from the lesser power.⁴⁵ In the same paragraph, Kant recognized the right of prevention, which is best understood as the right to undertake preparations for war if state is threatened by the possibility of going to war. Yet if a state takes preparations without being threatened by war, this action itself becomes aggressive therefore should be seen as a menacing increase of power by other states.

Although Kant arrived at a negative conclusion in *Toward Perpetual Peace*, regarding whether political prudence confers a right to the lesser power to attack the superior power, his reasoning for negating the right is solely based on announcing preemptive attack publicly "would bring about more surely and more quickly the very evil it feared".⁴⁶ Regardless of the ambiguity of the right to declare war to the superior power, we could perceive Kant's explicit stand on which he recognized the lesser power's right to undertake preparations when it genuinely believes it is threatened by another state.⁴⁷ Therefore, although secretive preemptive attack on the superior power is unjust for it is starting a war without first renouncing peace⁴⁸, and it is against Kant's principle of publicity; undertaking unannounced preparations for war on the lesser power's side is considered legitimate in Kantian term.

3.2.1. Domestic Analogies

⁴² Ibid., p. 99.

⁴³ Kant, 1996 (1797)., p. 116 (AA, 6:346).

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Kant, 1991., p. 128 (AA,8:384).

⁴⁷ "the right of prevention": Kant, 1996 (1797)., p. 116 (AA, 6:346).

⁴⁸ Kant, 1996 (1797)., p. 116 (AA, 6:346).

Yet before moving on, there are three problems needed to be addressed – first one is taking domestic analogies from self-defence right of individuals for national defence. Doyle argued by such analogies, the reciprocal-relation feature of individual self-defence can also be found from the self-defence right of states, that is the national defence right. Then by proving Kant permits lying for self-defence for individuals, he argued that Kant permits states to lie via nuclear deterrence for national defence. However, Doyle seemed to have taken such analogies as implied, further proceeded his analysis without first proving the feasibility of such analogies. So, is making such analogies reasonable? I would say affirmative according to the following two points:

First, self-defence right for individuals is proved to be supported by Kantian nonideal moral principles. A state, according to Kant, is “the whole of individuals in a rightful condition, in relation to its own members”⁴⁹, therefore a state can be seen as a collection of individuals under a constitution, and these individuals, “that is , the members of a state, are called citizens of a state”⁵⁰ . Kant emphasized as human beings are always as an end and not merely as a means to the state, they must always be regarded and treated as co-legislating members of the state. Hence, they must be given the right to decide, as a collective entity, on whether the state should go to war. This right is derived from the duty of the sovereign to the people, and in this way, the people represents the sovereign itself.⁵¹ Kant goes on indicating that a state has the right to go to war when it is threatened to be violated or is violated; it also has the right of prevention to take preparation in case it has to go to war;⁵² and it is permitted for states to provisionally have army, weapons, and monetary support to defend itself from external attacks.⁵³ Incorporating the above all, we can know that the people has the right to collectively decide to protect themselves from external attacks utilizing necessary instruments. Therefore, lying as a national defence means should be morally permitted for the reason that armies and weapons are capable of violation of rights of humanity (although they are necessary evil for prosecution of national right of defence); while lying is merely putting them at risk.

Second, as Kant generalizes all states as “states” when he describes public rights,

⁴⁹ Kant, 1996 (1797)., p. 89 (AA, 6:311).

⁵⁰ Kant, 1996 (1797)., p. 91 (AA, 6:314).

⁵¹ Kant, 1996 (1797)., p. 115 - 116 (AA, 6:345 – 346).

⁵² Kant, 1996 (1797)., p. 116 (AA, 6:346).

⁵³ Kant, 1991., p. 95 (AA, 8:345).

and we could assume that states, as moral persons, are at least equal in their rights of states, which include right to go to war, right in war, and right after war. As Kant says in the right of nations we need to consider not only the relation of one state toward another, but also the relation of individual persons of one state toward the individuals of another, and toward another state as a whole; and this is the only difference between the state of nature of individuals and that of nations.⁵⁴ Therefore, right of nations should be considered another layer of rights added on to the lay of rights of individuals. And as it is every human's perfect duty to treat oneself and all others always as an end and never merely as a means to an end, the extent of national defence should be limited in an area from minimum effective to the bound of reciprocity as conditioned by the wrongdoer's offense. Therefore, although the full analogies of individual self-defence to national defence is debatable, the part that works as the basis of Doyle's argument is proved to be solid.

3.2.2. The Right to Lie

Lying was established to be permissible as a national defence measure in Doyle's conclusion, yet Kant proscribes lying in his ideal theoretical system, making it an immoral conduct to begin with. I attempt here to support Doyle's conclusion of permission to lie for national defence in the form of nuclear deterrence with further discussion on the right to lie in evil, nonideal circumstances. In her work *Creating the Kingdom of Ends*, Korsgaard elaborated in one chapter how lying to a deceiver to prevent one being used as a means to evil is allowed even required in a nonideal circumstance. Korsgaard contended that among the three formulas of Kantian categorical imperative, the formula of humanity and the kingdom of ends are stricter than the formula of universal law⁵⁵. As she proposed to interpret the Kantian ethical system as a double-level theory, in evil circumstances, the formula of humanity and kingdom of ends provide an ideal to live up to, while the formula of universal law draws the line beyond which is uncompromisable. She concluded that deception is impermissible under either the formula of humanity or the kingdom of ends; however under the formula of universal law, it is permissible to lie to deceivers in order to counteract the intended results of their deceptions. One has the right to resist liars due to their methods – to use one's reason as a means, to use one's honesty as a tool.

⁵⁴ Kant, 1996 (1797)., p. 114 (AA, 6:343 – 344).

⁵⁵ Korsgaard, 1996., p. 143 – 144.

Korsgaard quoted Kant in his *Lectures on Ethics* the following:

If we were to be at all times punctiliously truthful we might often become victims of the wickedness of others who were ready to abuse our truthfulness. ...if I cannot save myself by maintaining silence, then my lie is a weapon of defense.⁵⁶

Korsgaard therefore concluded that lying to a liar is a form of self-defence, as one owes it to humanity in one's own person not to allow one's honesty to be used as a resource for evil.⁵⁷

3.2.3. The State of Nature

The third problem is regarding the precondition of the right to go to war. Kant identified that the prosecution of such right is allowed in the state of nature among states. So what is a state of nature among states? According to Kant in MM, states are by nature in a non-rightful condition⁵⁸; like individuals in nature before they unit under a will – the constitution – and form a state⁵⁹. This non-rightful condition is a condition of war – it is not necessarily a condition of actual war and outbreak of hostilities, but a constant threat of hostilities⁶⁰, therefore it is a condition of injustice, a condition that no dispute can be settled by a lawsuit, instead only by war.⁶¹ This condition is in itself wrong in the highest degree, and states are under obligation to leave it⁶², to join a union of states and thus establish a state of peace.

Doyle identified current international relations as in Lockean anarchy – a concept taken from Wendt; yet problem is: does Kantian sense of “state of nature” equals Wendt’s “Lockean anarchy”? More importantly, is the current international relations, or at least the context of North Korean Nuclear Security Complex in Kant’s state of nature? Further on, in Kantian nonideal perspective, is a state morally permitted to take the preparation to defend itself in current international relation? And is North Korea morally permitted to do so with nuclear weapons?

⁵⁶ Ibid., p. 144.

⁵⁷ Ibid., p. 144, p. 146.

⁵⁸ Kant, 1996 (1797)., p. 114 (AA, 6:344).

⁵⁹ Kant, 1996 (1797)., p. 89 (AA, 6:311).

⁶⁰ Kant, 2006 (1795)., p. 72 (AA, 8:349).

⁶¹ Kant, 1996 (1797)., p. 116, p. 120 (AA, 6:346, 6:351).

⁶² Kant, 1996 (1797)., p. 114 (AA, 6:344).

The inquiry of these answers is best to start with identifying the alternative(s) to Kant's state of nature amongst states. For states to leave the state of nature, they are obligated to join "a league of nations"⁶³ to protect themselves from attacks from without. This league is a "pacific federation" – in the sense that it seeks to end all wars forever.⁶⁴ It does not involve sovereign authority, but only "an association".⁶⁵ It must be "an alliance" of states that can be renounced at any time and therefore must be renewed from time to time.⁶⁶ Perpetual peace can only be achieved when *all* states are encompassed in this union, and that is when all the rights becomes conclusive and a true condition of peace is established.⁶⁷ Before that, any rights of nations are merely provisional. With states joined in this union, disputes among members can be settled in a civil way – by a lawsuit – instead of in a barbaric way, namely by war.⁶⁸

Kant has described this union in *The Metaphysics of Morals* with different words like "league", "alliance", and "association". In *Perpetual Peace*, he indicates this union as a "pacific federation", a "federative union" and the state which would lead all nations to perpetual peace as "the idea of federalism".⁶⁹ Yet in the same page he also refers the member states of this union as "confederated states". Therefore it begs a further analysis on what type of political form this "union" is and which words can be used to correctly name it. John Law had an elaborated discussion regarding federalism and constructed a definition for it in his work *How can we define federalism*. He suggested that there are two distinct federal models within federalism, instead of only one which we have commonly known – the federal state or the federation.⁷⁰ The second model is what he called the federal union of states, which is "a multi-state political system in which there is a division of powers between two levels of government of *equal status*."⁷¹ The key difference between a federal union of states and a federal state is the former is a multi-state federalism by treaty or compact, and the latter a federalism by constitution.⁷² And what separates a confederation of states and a federal union of states is that the general government is

⁶³ Ibid.

⁶⁴ Kant, 2006 (1795)., p. 80 (AA, 8:356).

⁶⁵ Kant, 1996 (1797)., p. 115 (AA, 6:345).

⁶⁶ Ibid.

⁶⁷ Kant, 1996 (1797)., p. 119 (AA, 6:350); Kant, 2006 (1795)., p. 80 (8:356).

⁶⁸ Kant, 1996 (1797)., p. 120 (AA, 6:351).

⁶⁹ Kant, 2006 (1795)., p. 80 (8:356).

⁷⁰ Law, 2013., p. E – 104, E – 109.

⁷¹ Ibid., p. E – 105.

⁷² Ibid., p. E – 109.

subordinate to the regional government for the former, and is of equal status for the latter.⁷³

Let's return to Kant's description of this 'union' – we could know it is not a universal state or a world republic, as Kant stipulates in *Perpetual Peace* the Second Definitive Article that “this would constitute a federation of peoples, which would not, however, necessarily be a state of peoples”, and different states “are not to be fused together into one state”.⁷⁴ On this point, Kleingeld offered a proposal that Kant is not saying one should reject the idea of the state of states, he merely “presents us with a view as to how to start leaving the international state of nature”⁷⁵, which corroborated that this union of states is not a state of states. Further and more distinctive evidence is from *The Metaphysics of Morals*, where Kant explicates that this union “must...involve no sovereign authority (as in a civil constitution), but only an association, it must be an alliance that can be renounced at any time and so must be renewed from time to time”.⁷⁶ And he identifies an association of several states to preserve peace as a *congress*, in which more states will join and finally becomes a universal union. Kant indicates the congress as “a voluntary coalition of different states which can be dissolved at any time, not a federation (like that of the American states) which is based on a constitution and can therefore not be dissolved”. From the above we could see the union is not a state of states; and it is not a federal state by constitution.

John Law further specified the critical sub-concept of *equal status* between general government and regional government through reference to three attributes: (i) constitutional protection of the regional government, (ii) the direct effect of law of the general government, and (iii) majority-voting in the decision making process of the general government.⁷⁷ First attribute refers to the absence of a right for the general government unilaterally either to abolish or to reduce the powers of the regional governments. From above we know that neither is this union a state nor does it have a federal constitution, and it does not aim at the “acquisition of some sort of power”⁷⁸; therefore the member states of this union should have constitutional independence.

⁷³ Ibid., p. E – 105.

⁷⁴ Kant, 2006 (1795), p. 78 (AA, 8:354).

⁷⁵ Kleingeld, 2004., p. 307.

⁷⁶ Kant, 1996 (1797), p. 115 (AA, 6:345).

⁷⁷ Law, 2013., p. E – 106.

⁷⁸ Kant, 2006 (1795), p. 80 (AA, 8:356).

For the second and third attributes, Kant indicates the international right a state entitles to is according to universally valid external law⁷⁹ and guaranteed by a “surrogate for the compact of civil society”, which is a “superior legislative authority”.⁸⁰ And since this union aims for securing and maintaining the freedom, permanent peace, and deciding disputes among states by lawsuits, the direct effect of law of the general government must be applicable in this union; and the blocking or ‘veto’ power of individual regional government must be ended within the common sphere of action at least regarding peace and justice among states. From the above we can know that Kant’s league of nations is best seen as a universal federal union of states.

We could see that Kant has two visions expressed clearly for the relations among states – state of nature and a universal federal union of states. Compared with the current international system, where there are international laws, numerous global and regional organizations to address problems in various aspects on various levels, and global factors like trade, globalization, and climate change making nations and individuals interweave with each other further; it is hard to associate today’s international relations with state of nature. Yet the long list of wars, conflicts, insurgencies, clashes, and skirmishes happened in the past few decades or still ongoing, together with the unjust situations causing them that are not being settled by International Court of Justice or United Nations Security Council; it is clear that our world is still a long way from Kant’s universal union of states. Subsequently we ask: Has Kant indicated a stage in between? How is the current world compared with that stage? And what rights do states have in that stage?

In both MM and PP, Kant described achieving the state of peace as a process of continual approximation – it is a process of gradually encompassing all states, during which several states first form an association to preserve peace, providing a focus point for other states to join at liberty; later there are more than one of these associations, more states join them, and through these associations the union gradually extends further then finally becomes universal.⁸¹ Kant repeated in his works that it is all states’ obligation and immediate duty to join the federal union in order to establish the state of peace⁸²; yet during the process of approaching this ideal,

⁷⁹ Ibid., p. 81 (AA, 8:357).

⁸⁰ Ibid., p. 80 (AA, 8:356).

⁸¹ Kant, 2006 (1795), p. 80 (AA, 8:356); Kant, 1996 (1797), p. 119 – 120 (AA, 6:350 – 351).

⁸² Kant, 1996 (1797), p. 114 (AA, 6:344); Kant, 2006 (1795), p. 80 (AA, 8:356).

it is voluntary (arbitrary) for states to join the associations that ultimately extend into the universal union that Kant called *congress*. Kant also emphasized that both these associations of states and the federal union can be dissolved or renounced at any time. Recall that Kantian nonideal theory allows middle grounds between full-scale implementation of moral requirements and the complete surrender of them; Horn's interpretation of Kant's recognition of the possibility of morality being improved or progressing through law is direct evidence for Kant's proposition on the gradual approximation of the ideal morality in nonideal circumstances. Pauline Kleingeld also contended that the core of Kant's argument regarding the full realization of perpetual peace should be pursued mediately, via the voluntary establishment of a league, and not via premature attempts to institutionalize a state of states immediately.⁸³ We could deduce from the above that in-between stages are allowed also for states when they are advancing towards the universal state of peace, in a way that they can join at liberty the federal union at their own discretion, according to their own conditions. Therefore the international system could be in such a stage that some states have joined one of the associations while some remain in state of nature; or states have joined an association yet they renounced their decisions later due to imperative reasons. These two situations in international system could be called a "partial state of nature", which is a middle-ground stage between state of nature and universal union of states.

We could further deduce that because it is obligated for all states to leave the state of nature, those who joined the union should be seen as in a more advanced stage of morality than those who have not yet joined. For those who have not joined, they are still in the state of nature, in relation to the others who have not joined and those who are members of the union. For the members, they are in state of peace within the union, yet they are in state of nature with the outsiders, thus they are not completely safe from attacks. Therefore, in partial state of nature, the rights of states change according to the related status a state is in with the others: for members of the union, they are obligated to keep peace within the union and settle disputes in a civil way, they have the right to go to war and to prepare to go to war with the outsider states; for the outsider states, they are obligated to move towards joining the union and they have their rights in state of nature with other states including the union members.

⁸³ Kleingeld, 2004. p. 318.

Partial state of nature would be more appropriate for describing our current international system than either state of nature or universal federal union of states. There are associations of states like EU and ASEAN, that aim at facilitating and enhancing corporation and connection among states; there are alliances of states like UN and NPT, that aim at solving one specific global problem or global problems in general. Yet they are either not strong enough to settle all disputes among states and peoples, or they are not just enough to settle them in a way that convinces every party. Either way, acute and fundamental conflicts of interests exist among states and peoples that cause skirmishes, clashes, or even wars internationally. International trade is another strong tie that weaves states into a web and pulls them away from arbitrary wars with each other. Yet the fundamental difference between Kantian ideal federal union of states and the trade-tied international society which is our current world, is that Kant repeatedly identified the former as dissolvable at any time and to be joined voluntarily and at liberty; yet the latter is like a tide swept across the world that pervades states regardless of their free will.

From above we knew that for states in partial state of nature, their rights of states change according to their relative status with each other. For a union that is aimed to seek perpetual peace, one of the defining indicators of a member would be its involvement of war – has it waged war or threatened to wage war against other states? Has it been actively engaged itself in the preparation of warfare? Has it been involved in ongoing war(s)? When a state is involved in war(s) in any way, it cannot be within the union; it is thus, in the state of nature with all others; therefore, it has the right to go to war, right of prevention, and right of national defence.

3.3. Kantian Nonideal Theory on National Defence

After addressing the domestic analogies problem and the state of nature problem, we can return to Kant's stand on national defence. There are three caveats we should be aware with his stand. First, the lesser power must have *genuinely* perceived threats of aggression in order for it to invoke the right of prevention and the right of self-defence, any act of private vengeance or enmity or interests seeking in the name of

self-defence is proscribed.⁸⁴ However, it is difficult for others to examine the authenticity of the lesser power's perception for it is subjective, hence there should be concrete evidence of such threats. Second, there should be substantial evidence indicating the increase of the other state's power being potentially aggressive therefore menacing. Third, no act of hostility is justified if it would destroy the mutual trust among states in a future period of peace.⁸⁵ Doyle suggested that viewing from some historical events, the mass destruction of nuclear weapons is not hostile enough to be absolutely proscribed from use in Kantian terms.⁸⁶ Yet it is important to note that the perception of hostility sufficiently vicious to hinder future pacific possibilities is susceptible to culture, religious beliefs, ideology, and historical backgrounds among specific nations – to list a few – it could be contingent for atomic mass destruction to be deemed as such act.

Subsequently comes two questions: If the unannounced preparations are discovered by the superior power, does the maxim of this action resemble the maxim of political prudence being declared publicly, therefore should be rendered unjust, for undertaking preparations is a showing of intension to go to war? Should the preparations be rendered unjust because it might be considered menacing increase of power in a third state's perspective? For a state to go to war first due to the concerns that it might have to go to war later is absurd for its action makes the probability a certainty. Yet undertaking preparations, even discovered by others, does not necessarily make war a certainty. As long as the state genuinely perceived threat of aggression from another state and there is concrete evidence to support such threat, preparations for war taken by threatened state should be considered legitimate based on its right of prevention and right of self-defence. And it should not be seen as menace because it is merely a rational reaction from a state confronted by a threat of war; and the entire purpose of such preparation should only be in response of such threat.

In this chapter we discussed Kant's duty of self-defence and its national analogies – Kant permits personal lethal self-defence on the culprit only when one's life is under attack. The national analogy of such duty is that national defence can best be seen as a

⁸⁴ Doyle, 2010. p. 100

⁸⁵ Kant, 2006 (1795)., p. 70 (AA, 8 :346).

⁸⁶ Doyle, 2010. p. 100. Note 21.

reciprocal relation; and lying in the form of nuclear deterrence as a means for national defence is morally permitted in the perspective of Kantian nonideal theory when dealing with a deceiver. International relations in our current world, according to Kantian nonideal theory, can be seen as in partial state of nature, in which rights of states differ according to the relative status of state in question with another. If a state has direct involvement of war(s), it is to be seen as in state of nature with all others; and it has the right to go to war and right of prevention, which means it can take preparation when genuinely perceived threat of war; and there should be substantial evidence for such threat. For nuclear deterrence, any act that would destroy the mutual trust that is needed to establish a future in peace is to be proscribed. Conclusively, Kantian nonideal theory permits a state to undertake preparation of equivalent force with which it was threatened, including nuclear deterrence, under the condition that no action shall be taken if it makes establishing peaceful future impossible.

3.4. Acquiring and Stockpiling Nuclear Weapons

In the case of being threatened with nuclear attack, it is permissible for the threatened state to undertake preparation of entering a nuclear war, which would mean acquiring and stockpiling nuclear weapons, exert deterrent threats, and the actual using of nuclear weapons. Kantian nonideal theory has significant restraints on the actual use of atomic destructive force, yet what is the boundary for acquiring and stockpiling nuclear weapons, and that of exerting nuclear deterrence in the perspective of Kantian nonideal theory?

As Nye enumerated in his five maxims of nuclear ethics, nuclear weapons cannot be treated as conventional weapons in any way.⁸⁷ For the long-term and destructive effects radioactive material can do to humans, nature, and ecosystem, the moral guidance for acquiring, handling, and stockpiling nuclear weapons should be emphasized; and the ability to abide by such guidance should have determining implications on the moral judgement of whether the threatened state is permissible to acquire nuclear ability.

⁸⁷ Nye, 1986. Chapter 7.

Recall that the right of necessity dictates it is not inculpable but only unpunishable to harm the innocent in order to save one's life; not to harm the innocent is an unconditional duty while saving one's own life is a conditional duty. Therefore harming the innocent is considered a violation of duty, may it be done in purpose or in accident. Hence it is a duty for the actor to take necessary measures to avoid the violation of duty from happening, in the process of seeking its own end. In the process of acquiring, handling, and stockpiling nuclear weapons, the acquiring state is obliged to acquire the techniques or measures for properly managing the radioactive material, and for effectively preventing any leakage or accident. It is also morally obligated for the acquiring state to store and deploy the weapons in a way that accidental or unauthorized triggering is highly unlikely, which includes measures like physical proceedings to prevent missile launch that would take several hours to reverse, separating warheads from delivery systems that would take even longer time to reverse.⁸⁸ It is also nuclear aspirant's duty to take necessary precautions to prevent its nuclear command and control (NC2) system from getting hijacked or manipulated at any point.⁸⁹

However, in a non-ideal circumstance, where the nuclear aspirant has no way of acquiring such technique or measures, or the technique or measures acquired is not enough to prevent harm being done to the innocent, would such situation influence the moral permissibility of the aspirant's acquisition of nuclear ability? In the process of acquisition, handling, and stockpiling of nuclear device, it would render the process morally impermissible if any kind of direct harm was done to or will inevitably be done to a human life of whom did not give rational consent to sacrifice his/her life for said process, or there is no reason to believe that s/he will give such consent.⁹⁰ While it is absolutely forbidden to harm innocent lives, it might be necessary sometimes to put them at risk⁹¹, as long as the aspirant state only intends to do good and has done what could be done to prevent harming the innocent.

3.5. Nuclear Deterrence: On Militaries and On Civilians

⁸⁸ Ritchie, 2014. p. 612

⁸⁹ Fritz, 2009. p. 7, p. 16.

⁹⁰ Wood, 2009. p.249. n16.

⁹¹ Doyle, 2010. pp. 98 – 99.

Let's now focus on exerting deterrence. According to Doyle's inference of Kantian nonideal theory regarding nuclear deterrence and defence, the nuclear Aspirant (the threatened state) is morally permitted to deter with nuclear attack against the military centers of the Rival (the threatening state); and carry out the nuclear deterrence with significant constraints on only military centers when it is under nuclear attack.⁹² As for levying nuclear deterrent threats against Rival's government and population centers, in addition to military center, Doyle suggested it is impermissible even the Aspirant has no intension of carrying out the deterrence.⁹³ He reasoned that a convincing nuclear deterrent threat would activate the Rival's hostility and consequently make trust building difficult. Such action contradicts with Kant's Sixth Preliminary Article in PP and it is therefore not permissible. Doyle then deemed his judgement to be "not a necessary one" in the foot note, as suggested otherwise by the continuing peace between the U.S. and Japan after the nuclear bombing of population centers in Hiroshima and Nagasaki.

The logical deduction appears impeccable at first glance. Yet from the nuclear weapon delivery mechanisms currently available we could know that it is often difficult for the Rival to know which target the Aspirant is threatening when the nuclear weapon is in strategic deterrent stage, especially if the (allied) Rival state(s) and the (allied) Aspirant state(s) are neighboring states or within the same region. It is only after the warhead had been loaded into the delivery system and ready for launch, can it be deduced what it might be targeting according to the property of the delivery system; and only when it aims at the target will this deduction becomes more certain. Therefore in nuclear deterrence stage, the Rival can only *assume* that the Aspirant's nuclear deterrent threat is targeting (a) general targets, including both military and civilian centers, (b) only military centers, and (c) only civilian centers. The situation of scenario (a) is identical with determining the mere action of acquiring nuclear weapons is hostile enough to make mutual trust impossible, which has been disproved above; therefore if the Rival assumes the deterrence is generally aimed, the mutual trust should not be damaged to an unredeemable extent. Nuclear deterrent threat aiming for military centers is proven above to be not among the actions of mutual-trust breaking, thus in the case of scenario (b) the mutual trust would be maintained.

⁹² Doyle, 2010. pp. 103 – 106.

⁹³ Ibid., p. 107.

In scenario (c) however, to target only population centers can be considered an action of extermination for it is not an action to assert one's right by means of violence but an action of annihilation, suggesting enmity and vicious hostility. For the Rival to assume the Aspirant would ignore the option of targeting military centers and only to target government and population centers, the Rival would have some established understandings of the Aspirant's manner of thinking, which renders the Aspirant is vengeful. In that case, mutual trust has already broken beyond repair before the nuclear deterrent threat is posed, therefore breaking mutual trust through threatening government and population centers is inapplicable in scenario (c). Therefore, in the situation where the nuclear deterrent choice is no way to be known for sure, the judgement of the threats leading to an irreversible breaking of mutual trust is either disproved or inapplicable.

In the situation where the Rival can distinguish the target(s) the Aspirant is threatening even when the weapon is in strategic deterrent stage; or the Aspirant loads the nuclear warhead to specific delivery system and aims, constituting an imminent deterrence situation, there are two scenarios which either (d) the Aspirant threatens only the military centers, or (e) it threatens both military and civilian centers, for the intentional threats posed on both and on only population centers would convey the same level of enmity. The circumstance of scenario (d) is equivalent to scenario (b), hence mutual trust would be sustained. Scenario (e) on the other hand, shows the promise to harm noncombatant civilians which *might* infuriate the Rival and deteriorate mutual trust beyond redemption. In plain terms, in all the scenarios of the Aspirant threatens the Rival with nuclear strike which the Aspirant secretly would never carry out, only when the Rival can specify unambiguously the threatened target includes its civilian centers, might it be enraged and would therefore jeopardize the mutual trust between the two states for their future peace. Therefore, whether threatening civilians conveys sufficiently vicious hostility to make mutual trust impossible is considered one of the possible determining factors of making a valid Kantian nonideal assessment of whether the Aspirant is permissible to threaten the Rival's civilian centers.

However, making mutual trust impossible is something hard to assess precisely. Recollect that mutual trust between states or among states within a region is susceptible to culture, religious beliefs, historical backgrounds, and ideologies, among

other factors. Kant stipulates breaking mutual trust to be morally proscribed due to the reason that doing so makes it impossible for states to enter the federal union of states which guarantee a perpetual peace. Yet it is argued above that according to Kantian nonideal theory, from state of nature to perpetual peace is a long process, there are in-between stages; therefore whether one action has made the mutual trust impossible can only be determined when it comes to the state of perpetual peace. Thus breaking mutual trust can only be assessed in a provisional status; and the broken mutual trust can only be rendered as provisionally broken. Therefore it is unconvincing to assess one action as morally prohibited based solely on breaking mutual trust.

If the effects of threatening civilians on mutual trust are inconclusive, there is another possible factor which could determine the moral permissibility of such action. “(M)orality permits states to do that which is otherwise impermissible in order to prevent greater injustices from happening.”⁹⁴ Although this thesis might be too utilitarian to be derived from Kant, it is a moral guidance suitable for nonideal circumstances; combining it with Doyle’s interpretation of Kantian non-ideal theory on risking humanity’s rights in the pursuit of legitimate self-defence and we have this: Kantian non-ideal theory permits states to risk breaking mutual trust in order to prevent injustice that is greater than risking the breaking of said mutual trust. Kant specified it as the Sixth Preliminary Article in PP for the perpetual peace between states that “no state shall allow itself such hostilities in wartime as would make mutual trust in a future period of peace impossible.”⁹⁵ In the following paragraph he further explicated that “there must remain...some degree of trust in the enemy’s manner of thinking, since otherwise no peace could possibly be reached, and hostilities would degenerate into a war of extermination.”⁹⁶ Down a few lines he reiterated “it is clear that the means named above would inevitably lead to such a war of extermination”⁹⁷, and from context we learnt that “the means named above” include all the behaviors that would render mutual trust in future peace impossible, which Kant utterly prohibits with this Article. We can therefore know that the actions Kant proscribes are the sufficient condition for a war of extermination – they make a war of extermination unavoidable. And from Kant’s text we could see that the

⁹⁴ Doyle, 2010., p. 90 – 91.

⁹⁵ Kant, 2006 (1795)., p. 70 (AA, 8:346).

⁹⁶ Ibid.

⁹⁷ Kant, 2006 (1795)., p. 71 (AA, 8:347).

resulting of the extermination of all rights and all established institutions, along with the mass destruction of humanity was the main reason for the proscription of these actions – “...both parties and, moreover, all right can be eradicated simultaneously, could bring about perpetual peace only over the great graveyard of humanity. Such a war, therefore, and hence the use of the means which would lead to it, must be utterly forbidden.”⁹⁸

From the inference above, the previous proposition could be revised into such: In the non-ideal circumstances, states are permitted to risk initiating a war of extermination in order to prevent injustice that is greater than risking a war of extermination. What could be an injustice that is greater than risking a war of extermination? The most direct answer would probably be the definite happening of a war of extermination. Therefore, small rectification could be done to our proposition: In the non-ideal circumstances, states are permitted to risk initiating a war of extermination in order to prevent the definite happening of a war of extermination.

Doyle’s theory of risking to harm humanity for the sake of exercising the right of self-defence can also find its root in one of the paradox identified by Greg Kavka in his work *Some Paradoxes of Deterrence*⁹⁹, where Kavka presupposed a special deterrent situation (SDS)¹⁰⁰ in which a nation N makes a nuclear deterrence believing it to be the only reliable means to prevent nuclear attack, while secretly having conclusive moral reasons not to carry out the deterrence when the deterrence fails, which is similar to the nuclear deterrent case in this dissertation. Kavka identified three paradoxes in a special deterrent situation and analyzed the moral perspective that accepts all and the one that rejects all.¹⁰¹ Then he introduced a middle-ground position that seeks to accommodate the valid insights of both perspectives, which signifies the distinction between harms and risks, and deems prohibitions of risks as unreasonable.¹⁰² We could see that Kavka agreed with the position that uses nuclear deterrence to prevent war is morally permitted and preferred, even if the actors would need to compromise their virtue integrity by corrupting their intentions and means of action.

⁹⁸ Ibid.

⁹⁹ Doyle, 2015., p. 857.

¹⁰⁰ Kavka, 1978., pp. 286 – 287.

¹⁰¹ Ibid, pp. 299 – 300.

¹⁰² Ibid, p. 301.

Hence a non-ideal Kantian assessment of the Aspirant threatening the Rival's civilians with a nuclear attack that is never to be actually carried out comes as such: the Aspirant is not permitted to threaten distinctively the Rival's civilians with a nuclear attack which the Aspirant secretly intends to not carry out, unless the Aspirant believes it is the only thing to do to prevent a war of extermination.

Table 1 below summarized the moral assessments of different scenarios discussed above, and the condition(s) they are under:

| Assumption / Strategic Deterrence | | | Specific Threat / Imminent Deterrence | | |
|-----------------------------------|------------------|---------------------------------|---------------------------------------|-------------------------------|---------------------------------|
| Target type | Exert deterrence | Carry out when deterrence fails | Target type | Exert deterrence | Carry out when deterrence fails |
| Military + Civilian | √ | / | Military + Civilian | ? | × |
| Military | √ | √* | Military | √ | √* |
| Civilian | / | / | Civilian | Same as "Military + Civilian" | |

* can only be carried out under nuclear attack(s);

? not permitted unless it is the only means to prevent a war of extermination.

Table 1.

Going back to the three deterrent paradoxes identified by Kavka, paradox 1 (P1) presented a moral assessment identical with the Kantian nonideal assessment made above regarding the Aspirant threatens the Rival with a nuclear attack which the Aspirant secretly decides to never carry out.¹⁰³ The other two paradoxes, P2 and P3 from Kavka's work, can be associated with the moral assessments on making the deterrence more credible. In the explication of paradox 2 (P2) and its instantiation Kavka indicated that under the situation of which it would be right for actors to form

¹⁰³ Ibid, pp. 288 – 291.

the intention to carry out the deterrence once it fails, some actors can form such intention and some cannot. The ones who cannot are the rational and moral ones.¹⁰⁴ The dilemma for assessing nuclear deterrence under such situation, is that no one except the Aspirant itself can know for sure whether the Aspirant formed the intention or not, until the deterrence has failed and has been carried out. All the deterrent actions the Aspirant did could be acts to make the deterrence more convincing, also could be real preparation for nuclear attack. From Kantian nonideal perspective, it is conditionally morally permitted for the Aspirant to threaten the Rival with nuclear attack only when the Aspirant never intends to follow through with the attack, which means that the Aspirant never actually succeed in forming the intention to execute the attack. From Kavka, we can know that the ground of the desire to form the intention is and should be seen as completely distinct from the desire to go through with it.¹⁰⁵ With this distinction it is possible for the intention of reciprocate the nuclear attack to be morally proscribed while the intention of intending to reciprocate as a means of deterrence could be morally permitted. Hence, the Aspirant's acquisition of nuclear weapons, along with its actions to facilitate the operability of the nuclear weapons, together with other actions that increase the credibility of the deterrence could be morally permitted if the Aspirant intends them as and only as a means of deterrence.

4. National Defence and North Korea Nuclear Security Complex

4.1. The De Facto At-War Status, The Nuclear Threat, and The Life Threats

How does the moral assessment in the stance of Kantian nonideal theory look like for the noticeable practices in North Korean Nuclear Security Complex? The most salient and fundamental assessment should be the morality of North Korea's acquisition of nuclear weapons. According to propositions suggested above, in partial state of nature like the current international system, a state should be involved in war(s), and be threatened substantially by nuclear attacks to be morally permitted to

¹⁰⁴ Ibid, pp. 292 – 294.

¹⁰⁵ Ibid, pp. 290 – 291.

acquire nuclear weapons for national defence.

The most direct prove of involvement in war(s) for North Korea is the fact that there is no peace treaty signed between it and the United States after the ceasefire of the Korean War; an armistice agreement was signed instead and no peace treaty has ever been established, which leaves the situation between North Korea and the United States technically still at war with each other to this day. Hence we can acknowledge the state of nature status between North Korea and both the United States and South Korea.

Furthermore, aside from technicality, the de facto situation between the US and North Korea has not been peaceful – the US abrogated the Armistice Agreement in the beginning of 1958 by deploying at least four nuclear weapon systems in South Korea, including one surface-to-surface missile system.¹⁰⁶ From the first deployment to 1961, there were seven different nuclear weapon systems and 600 nuclear warheads deployed in South Korea¹⁰⁷ – including the Sergeant missile system with 130km maximum range, and nuclear bombs for fighter-bombers which could do damage further into North Korean territory¹⁰⁸. During 1976 to 1981, there are a total of 35 visits of ballistic missile submarines carrying nuclear warheads, to South Korean port Chinhae¹⁰⁹. The presence of nuclear warheads did not cease to exist until 1991, at the brink of the dissolution of Soviet Union, U.S president G.W.H. Bush announced the Presidential Nuclear Initiative, which signified the full withdrawal of nuclear weapons on South Korea territory. Throughout the whole 33 years during which the US deployed nuclear capability in South Korea, the number of nuclear warheads peaked at 950 in 1967, 640 at 1974, gradually cut down to 150 at 1982, before South Korean President Roh Tae Woo publicly declared the full withdrawal of nuclear weapons at late 1991, there were around 100 warheads in South Korean territory. And during most of this 33-year period, fighter-bombers with tactical nuclear bombs were within range of quick strike of North Korea, and at some point covering the range of Beijing, Shanghai, and Vladivostok.¹¹⁰ This was the first and the long-lasting substantial nuclear threat against North Korea.

¹⁰⁶ Kristensen et al. 2017, p. 350.

¹⁰⁷ Ibid.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid., pp. 352 - 353.

¹¹⁰ Ibid., p. 351.

After the Korean War, North Korea was in a state of near total destruction, especially in economic and industrial bases. In urgent need for rehabilitation, and being a friendly member of the Socialist community, North Korea relied deeply on the “big brother” Soviet Union and the “comrade-in-arms and close friend” China on economic aid and ideological leadership.¹¹¹ Yet as Kim Il Sung gradually established his *Juche* ideology in state governing, the ideological gap between North Korea and Soviet Union and the rest of the Socialist community became wider and wider.¹¹² The partition of ideology and the firm will of independence caused North Korea’s decision to keep an arm’s length with the S.U. during the 1960s.¹¹³ Although being “comrade-in-arms sharing weal and woe”, China is itself in economic difficulties since the Great Famine during late 1950s and early 1960s. Plus though China did its best to assist North Korea, its limited capability along with the increase demand from other communist and “third-world” countries made it unable to keep up with the growing needs of North Korea.¹¹⁴ During the second half of 1960s, as the Cultural Revolution commenced, China’s foreign policy became more radical and more antagonistic towards North Korea’s fence-sitting attitude regarding the Sino-Soviet polemics. The fall out between the two former comrades persisted until end of 1960s.¹¹⁵

The foreign policy priority of Soviet Union started to shift from Sino-Soviet conflict to Soviet-U.S. detente, reducing Soviet’s need of North Korea, which led to the Soviet lack of attention to North Korea during most of the 1970s. Another major factor for Soviet-DPRK alienation during the 70s was Kim Il Sung’s leadership – his enhanced personality cult and his state ideology *Juche* which embedded into North Korean constitution diverged the two countries even further.¹¹⁶ From Kim’s perspective, both Khrushchev in the 1960s and Brezhnev in the 1970s to 1984 were “revisionists”¹¹⁷; thus fundamental diverge from revolutionary ideology boasted by Kim elucidated him that the Soviets were not to be trusted as a reliable ally. On the other hand, the strategic posture of China also changed during the 1970s, as de-emphasized revolutionary diplomacy became a key component to China’s external relations, Sino-U.S. detente heated up even more after Nixon’s ice-breaking visit to

¹¹¹ Kim, 2012., pp. 454 – 456.

¹¹² Ibid.

¹¹³ Ibid. Also see Cheng, 2010.

¹¹⁴ Cheng, 2010., p. 187.

¹¹⁵ Ibid, pp. 190 – 195.

¹¹⁶ Ha, 1986., p. 582.

¹¹⁷ See Kim, 2012; also Cheng, 2010.

China in 1972. China's preference for maintaining peace and stability on the Korean Peninsula has been growing stronger by time¹¹⁸; and that opposed with Kim's initial idea of military reunification relying on the help from the Soviet Union or China. Observing China's fundamental division with the Soviets since the mid 1950s, along with the progress of normalization of relations between China and the U.S., culminating by the formal establishment of Sino-U.S diplomatic relations in 1979, Kim gradually realized that China has walked further away from the revolutionary track, and can hardly be recognized as the steadfast same-minded comrade anymore.

North Korea has therefore stepped into a security dilemma right after the armistice – it was at war and hostile with the United States; it was constantly threatened by nuclear attacks; its vision of militarily reunifying South Korea had been perceived by the U.S. and South Korea; yet both the Soviet Union and China – the two crucial helpers without whom it cannot realize the reunification, had been rendered not trustworthy. North Korea was stuck in a way that from the U.S.'s perspective it was supposed to be under the security umbrella of the communist community, and it will conquer South Korea by force the first chance it has, with the firm backing from the Soviets and China; therefore the U.S. was convinced that nuclear deterrence was necessary for South Korea's protection. However, from North Korea's perception, its dream of reunification by force drifted further as the fundamental divergence wedged between both China and the Soviet Union, and itself; it was forced onto a path of becoming arch enemy with the U.S. without backup from any ally. Hence, its only logical and reliable option for national survival was nuclear capability. And according to its situation during 1953 to end of 1970s, it was morally permitted for North Korea to acquire nuclear weapons from the perspective of Kantian nonideal theory.

4.2. Three Tools of War

Along with the signing of Sino-Japanese peace and friendship treaty, Sino-U.S. relations normalization, relations between North Korea and China were becoming more and more strained, while North Korea-Soviet ties grew stronger during the first half of 1980s.¹¹⁹ From the mid-1980s, as China worked toward détente with South

¹¹⁸ Chung et al, 2013., pp. 250 – 251.

¹¹⁹ Kim, 2012., pp. 507 – 509.

Korea, and participated the Asian Games and Olympics held in Seoul in 1986 and 1988 respectively, North Korea leaned further toward the Soviets, establishing closer security ties and securing shipments of weapons and goods to North Korea. Yet the dissolution of the Soviet Union in late 1991 signified the loss of North Korea's most important security patron and economic partner;¹²⁰ and also the loss of the one country that might defend North Korea with nuclear force if the U.S. attacks.

In order to counter the chronical nuclear threat exerted by the United States and to maintain self-reliance and independent as the *Juche* ideology dictates, North Korea sought to develop its own nuclear capability since the 1960s. The early development of nuclear program was focused on nuclear power plant, which was excessively dependent on the Soviets, yet since North Korea upgraded its soviet-supplied nuclear reactor to 8 MW in 1974, its path of nuclear development has become more independent. Another important factor pushing North Korea's nuclear motivation dated back to 1953, when U.S. President Dwight Eisenhower launched his "Atoms for Peace" campaign, through which Washington facilitate various countries with scientific and technological support to develop their own nuclear capability, recipients including South Korea.¹²¹ Although Washington continuously blocked South Korean attempts to develop nuclear military potential since 1969, the repeated efforts South Korean made worried Pyongyang.¹²² Since 1958, shortage of energy has become a constant problem for North Korea, which is one of the major reasons for its eager to get help from the Soviets for its nuclear power plant. Yet the Soviet leadership kept rejecting North Korea's requests for a nuclear power plant, while attempted to increase the price for the oil they export to North Korea.¹²³ Kremlin was selectively helping its satellite states on gaining civil nuclear capability – selecting criteria seem to include advanced technological level, political loyalty, controllability, and rectification of the NPT.¹²⁴ As a technologically underdeveloped, diplomatically fence-sitting state that persists on self-reliance and independence, North Korea is obviously not on USSR's favorite ally list. Moreover, most of the nuclear reactors the Soviets undertook for their satellite states were light-water reactors – they are dependent on Soviet supplies of enriched uranium as fuel; and they are less preferable

¹²⁰ Ibid., pp. 506 – 507.

¹²¹ Szalontai et al., 2006., p. 2.

¹²² Ibid., pp. 8 – 9.

¹²³ Ibid.

¹²⁴ Ibid., pp. 11 – 12.

when developing military capability. It can be reasonably assumed that Kremlin attempted to control its satellites states further via monopolizing both nuclear fuel supply and nuclear military capability. For North Korea, dual nuclear capability was the best option to prevent being exploited by its nominal ally and staying independent, while develop its own defence power towards hostility.

Recall Kantian nonideal theory indicated that the extent of national defence should range from effective minimum to the bound of reciprocity. According to Kant's three tools of war – military power, the power of alliances, and the power of money¹²⁵, North Korea is not in the advantage of any at any time, compared to the United States. Before the collapse of the Soviet Union, the allies DPRK had were more nominal than reliable and practical; after the dissolution of USSR, Russia – DPRK relations went through an after-shock of distance and coldness during the decade of 1990s. Since the late 1970s the North Korean economy had been going downhill, the rigid adherence of *Juche* socialism had led to a fundamental resistance of any economic or political reforms in North Korea, making the “socialist paradise” suffered from consecutive years of economic decline; North Korea's GNP, once on a par with that of South Korea, shrunk into one sixth of the GNP of the latter in early 1990s.¹²⁶ Therefore, for the national defence to be effective, nuclear deterrence is not only permitted but also necessary for North Korea at that point.

4.3. Pushed Further On The Path

DPRK's attempt to withdraw from the NPT in 1993 is believed to be induced by several factors – the economic trouble it was in; the constant energy shortage it suffered; the extreme insecurity caused by the dissolution of USSR and the “communist camp”. At the same time as its announcement of withdrawal of the NPT, Pyongyang made it clear that this nuclear issue could be resolved at a high-level meeting between the United States and North Korea.¹²⁷ Via this measure of brinkmanship, North Korea was hoping to get the chance to sit down with the United States and work towards normalization of their bilateral relations, resolving the fundamental security threat that constantly looms over it, which is the hostile status

¹²⁵ Kant, 2006 (1795)., p. 69 (AA, 8:345).

¹²⁶ Kim, 2012., p. 555.

¹²⁷ Ibid., p. 562.

with and the nuclear deterrence from the U.S.

North Korea got its high-level talks with the U.S. at June 1993, meanwhile war threat from the U.S. had never stopped – as the negotiations were stuck, Washington reportedly undertook detailed planning for an air strike on DPRK's key nuclear complex, even though this would most likely trigger a full-scale war on the Peninsula.¹²⁸ After many twists and turns, the Agreed Framework was signed at late 1994. The Framework stipulated U.S. to undertake the construction of two light-water reactors for the North, and to compensate the North's energy lost in the form of heavy oil; in exchange for North Korea to halt the operations and infrastructure development of its nuclear program, accept IAEA inspection and supervision.¹²⁹ Yet the Framework was meant to go beyond a non-proliferation tool, it called for both sides to move toward full normalization of political and economic relations.¹³⁰ For Pyongyang, the light-water reactor construction process was a token secured for a long-term U.S.-DPRK engagement and willingness to relax trading restrictions¹³¹, and the Framework was seen as a platform, within which the related parties establish new norms for interaction and cooperation, and work towards normalization of relations.¹³² As for the United States, the Framework was merely a non-proliferation tool, even an unwelcome and controversial one – since the Republicans seized control of the U.S. Congress at November 1994, criticisms and skepticism regarding the Framework had flooded Washington and caused the implementation of the Framework hobbling.¹³³ The implementation of the Framework lagged behind schedule tremendously due to various reasons from the beginning – the LWR site construction was postponed several time caused by the delays in production cost sharing talks between contributing countries of the project; heavy oil shipments were delayed due to the constant rejection from the U.S. Congress.¹³⁴ The Framework barely survived for four years, as North Korea was getting more frustrated and disappointed due to more delays in both LWR construction and heavy oil delivery, it launched the Taepodong missile despite U.S. warnings at August 1998¹³⁵, leading to U.S. Congress cutting its

¹²⁸ Pollack, 2003. P. 18.

¹²⁹ Carlin et al., 2008., p. 5. Also see Kim, 2012., p. 563.

¹³⁰ Carlin et al., 2008., p. 5.

¹³¹ Merrill, 1994., p. 11. Also see Carlin et al., 2008., p. 5.

¹³² Carlin et al., 2008., pp. 5 – 6.

¹³³ Martin, 1999., pp. 41 – 42. Also see Pollack, 2003., pp. 19 – 20.

¹³⁴ KEDO, 2003., pp. 3 – 4.

¹³⁵ Carlin et al., 2008., p. 6.

heavy oil provision.¹³⁶ The Framework almost immediately went moribund as George. W. Bush was elected the U.S. president. Bush's administration took an "ABC" (Anything but Clinton) approach to foreign policy and North Korea policy bore the brunt.¹³⁷ Bush announced his list of "Axis of Evil" at the beginning of 2001 and U.S.-DPRK relations took a nose dive. The Framework withered further as the United States and North Korea accuse each other of cheating and non-compliance. The recriminations led to the US suspension of heavy oil shipments and LWR construction, and North Korea's withdrawal from the NPT, effectively killed the Framework in spirit and substance.¹³⁸ The subsequent Iraq War disillusioned the North – not only normalizing relations with the U.S. was a distant dream, if the North does not possess nuclear weapon soon it could become the next Iraq. North Korea was therefore pushed further on the path of developing nuclear military capability.

4.4. Moral Assessment of North Korea's Current Practice

First we need to assess the morality for North Korea to employ lying in the form of nuclear deterrence as a means of national defence. Recall that it is permissible to lie to a deceiver in an evil, nonideal circumstance so that one and one's moral integrity would not be used as a means. It can be deduced that North Korea is permitted to exert nuclear deterrence as a means of national defence, if nuclear deterrence is seen as a form of lie and North Korea is being deceived to. Currently there are seven states in the world that have officially declared having operational nuclear military capability besides North Korea, and one state – Israel – that has never officially declared but is highly suspected to have nuclear military capability. Further, there are five states that are in possession of nuclear weapons via NATO nuclear sharing system, though the operational control of these weapons remains in the hands of the United States.¹³⁹ The seven nuclear military capable states are exerting nuclear deterrence to the rest of the world, and can be seen as lying in the form of nuclear deterrence. And the five NATO states can be seen as potential deceivers on nuclear deterrence in their respective regions. In the context of North Korean Nuclear Security Complex, the United States exerts nuclear deterrence particularly to North

¹³⁶ KEDO, 2003., p. 3.

¹³⁷ Jackson, 2018., pp. 32 – 33.

¹³⁸ Ibid., p. 33.

¹³⁹ Kristensen et al., 2019., p. 131.

Korea as they are in de-facto at-war status. Under the deception in the form of nuclear deterrence, North Korea should be permitted to deceive in the form of nuclear deterrence, so that its freedom would not subject to coercion and its honesty would not be used as a means.

The actual acquisition of nuclear military capability was in the late 1990s when North Korea got from Pakistani nuclear physicist A.Q. Khan the uranium enrichment technologies and centrifuge needed for extraction of more bomb material.¹⁴⁰ With the first successful underground detonation of a plutonium based device, North Korea achieved its nuclear capability in 2006. In mid-2009, the North conducted its second nuclear test – a more powerful explosion than the first test; four years later in 2013, the third nuclear test was carried out. The fourth and fifth test happened in 2016; Pyongyang claimed them to be the first successful hydrogen bomb explosion and first nuclear warhead test explosion respectively. The last test to this day was in September 2017, when North Korea claimed to successfully have detonated a hydrogen bomb; the corresponding yield report suggested the blast to be around ten times more powerful than the previous nuclear tests.

As for nuclear delivery systems, the backbone of North Korean current deterrence consists of close-range ballistic missiles, short-range ballistic missiles, and medium-range ballistic missiles (MRBM) which has an operational range of 1,200 – 1,500 km; as the most reliable ballistic missile system for the North at this moment, it can reach any target in South Korea and most of Japan.¹⁴¹ The North test-launched three intermediate-range ballistic missiles (IRBM) at May, August, and September 2017 respectively, estimated range between 3,000 to 4,500 km.¹⁴² American installations on Guam – a site of a major air base and logistics hub – are well within range of these IRBMs. North Korea had two test launches of intercontinental-range ballistic missiles (ICBM) in July 2017, demonstrating a top range of 10, 400 km which brings Alaska, Hawaii and more than half of mainland U.S. soil within striking range.¹⁴³ On November 29th, 2017 North Korea test-launched its largest and longest-range missile yet: the Hwasong-15, which has a maximum range of 13,000 km, sufficient to

¹⁴⁰ International Institute for Strategic Studies, 2007., p. 68. Also see Kim, 2012., p. 568.

¹⁴¹ Schilling et al. 2015., pp. 12 – 13 ; Kristensen et al. 2018., pp. 42 – 43.

¹⁴² Kristensen et al. 2018., p. 43.

¹⁴³ Ibid., p. 44.

potentially target all of the United States.¹⁴⁴ However, all the successful test launches of ICBM failed to demonstrate North Korea boasts the ability to build a re-entry vehicle for the protection of the missile's warhead yet; if the re-entry vehicle fails, the payload of the missile is likely to break up upon reentry into Earth's atmosphere.¹⁴⁵

Other capable delivery systems include light bombers Il-28 which allegedly are also able to reach American installations on Guam.¹⁴⁶ Yet whether North Korea has the intension of pursuing such delivery method is under question.¹⁴⁷ North Korea is developing at least one sea-launched ballistic missile Pukkuksong-1, it is carried by a Sinpo-class submarine which has only one missile tube. The Pukkuksong-1 was test-launched in 2016 and reportedly has a range of 1,200 km.¹⁴⁸

Yet several successful detonations of nuclear bombs and test launches of ballistic missiles does not equal North Korea having the capability of conducting precise missile strikes with operational nuclear warheads. Incorporating latest assessments from intelligence agencies, military and defence agencies, and private institutions from both the United States and South Korea, it is safe to assume that North Korea have produced fissile material sufficient to build 30 to 60 nuclear weapons. If the North was to make nuclear attacks, the Nodong medium-range ballistic missile appears to be the most likely to be the form of deliverable nuclear capability. And the nuclear warheads would most likely have 10 to 20 kilotons of yield as demonstrated in the 2013 and 2016 tests, for a warhead more powerful than that requires more fissile material or a special hydrogen fuel. North Korea has yet to demonstrate a capability to successfully deliver a fully functioning nuclear weapon on a long-range ballistic missile.¹⁴⁹

From the assessment above we could know that the credible nuclear deterrence North Korea can exert at this moment covers all South Korean territory and most of Japan. That is to say the North's deterrence covers both military and civilian centers in South Korea and Japan, but only military centers of the U.S. which located in South Korea and Japan. As for credible nuclear deterrence to the United States mainland and civilian centers, North Korea reached only one out of the four major criteria that must

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Schilling et al. 2015., p. 14.

¹⁴⁷ Kristensen et al. 2018., p. 44.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid., pp. 44 – 48.

be met – the North has the capability to build a missile that travels that far; but it has not yet demonstrated it possesses the technology to build a stable guidance and control system for the long-range missile; nor has it showed any reliable re-entry vehicle for its ICBMs that can survive the stress and heat generated by missile re-entry into the Earth atmosphere; plus it is yet to prove any of its purported nuclear weapons are nuclear warhead compatible with its ICBMs, or if it boasts the design to miniaturize and stabilize the nuclear weapons for such purpose.¹⁵⁰

Incorporating the conclusions drawn regarding nuclear deterrence morality assessment, the nuclear capability and ballistic missile North Korea currently boasts cast strategic deterrence to the Rival's and the Rival's allies' military and civilian centers; it has not yet posed any imminent deterrence to any of those centers due to lack of concrete evidence of possession of fully-functional nuclear warheads for ballistic missile. Therefore North Korea's nuclear capability is so far morally permitted, according to Kantian nonideal theory. However, what if North Korea was to take one step further on the nuclear deterrence road? Which type(s) of action by North Korea would be deemed morally proscribed? It was established before that nuclear deterrence against civilian centers would be morally prohibited unless it is the only means to prevent a war of extermination. Hence, is the current Northeast Asian situation prone to a war of extermination?

Despite the lobbying voices in Washington and Seoul supporting redeployment of nuclear weapon in the Korean Peninsula in the recent decade, there is no nuclear weapon deployed in the Peninsula at the moment. For the US – ROK joint military exercises that kept going on annually since late 1990s, US President D. Trump had announced a suspension on the exercises in 2018; and US Defense Secretary M. Esper reiterated an indefinite postponement of the exercises in late 2019.¹⁵¹ Thus for nuclear threats and general military threats, the United States and its allies have lifted both of them considerably. For relation normalization, although sanctions against North Korea based on Trading with the Enemy Act 1917 (TWEA) were lifted in 2008; new sanctions were applied on it in the same year through International Emergency Economic Powers Act 1977 (IEEPA) and still in act at this moment.¹⁵² At the first

¹⁵⁰ Ibid., p. 47.

¹⁵¹ Bender et al., 2019.

¹⁵² Bingham, 1977; US Department of the Treasury, 2020.

summit between North Korea Chairman Kim Jong Un and U.S. President Donald Trump in 2018, a joint statement was sign to repledge both sides' commitment to "establish new US-DPRK relations", to "join their efforts to build a lasting and stable peace regime on the Korean Peninsula", to "commit to recovering POW/MIA remains", and for North Korea to "work toward complete denuclearization of the Korean Peninsula".¹⁵³ However, the progress of the statement was hindered as the North Korea had showed at least eight types of various action to keep up with their end of the bargain, while the Americans had only taken one action – the moratorium of US-ROK joint military drill.¹⁵⁴ During the second summit in Hanoi, the unrealistic demand of fully denuclearization by January 2021 from Trump acted as one of the major reasons for the summit to end without any joint statement signed.¹⁵⁵ On this account, US-DPRK relations seem to be limping towards normalization, notwithstanding the long way ahead.

With the intertwined anfractuosity of the economic, political, security, and cultural relations among states around the globe and within the Northeast Asian region, a war of extermination – which involves the people of the country being massacred and the country being encroached or divided or occupied – is becoming less and less likely to happen. The means of changing an undesirable regime has become more clandestine and varies from inducing color revolution, to surgical strike to remove government key figures, to instigating peaceful evolution, etc. Even though these are more challenging for the targeted government to deal with, they are not means of extermination. Nonetheless, surgical strike resembles assassination in Kantian term, which once deployed would generate such hostility that makes mutual trust in a future period of peace impossible;¹⁵⁶ inducing color revolution or instigating peaceful evolution might be a violation of the duty of non-intervention. None of the above means of regime reforming is morally permitted in Kantian perspective; however to prevent or resist these action being done to a state cannot be seen as a green light for said state to cast nuclear deterrence on civilian centers.

From the rumors regarding surgical strike operations targeting Kim Jong Un, to the

¹⁵³ Joint Statement of President Donald J. Trump of the United States of America and Chairman Kim Jong Un of the Democratic People's Republic of Korea at the Singapore Summit., 2018.

¹⁵⁴ Kang, 2018.

¹⁵⁵ Bandow, 2019.

¹⁵⁶ Kant, 2006 (1795)., p. 70 (AA, 8 :346).

drone trike by U.S. that killed the Iranian major general Qasem Soleimani, for North Korea, surgical strikes on its leadership especially on its supreme leader is always something to worry about. The self-reliance and closed-up political ideology North Korea currently taking is considered effectively reducing the possibilities for color revolution or peaceful evolution to be induced; but for the North, caution is always suggested. Yet any of the above does not constitute a reason for North Korea to exert imminent nuclear deterrence to any civilian center in South Korea, Japan, or the United States. Therefore, according to Kantian nonideal theory, unless a full-scale war or a nuclear war is imminent, North Korea is morally proscribed to test-launch a ballistic missile with nuclear warhead; nor it is permitted to demonstrate loading such warhead to a ballistic missile or other effective delivery system, exerting threat to major cities in South Korea and Japan.

As for the ICBMs currently under development, is it moral for the North Koreans to keep developing the technology until they apprehend it completely? The conclusion drawn previously dictates that any ICBM test-launch is morally prohibited if it is loaded with a nuclear warhead; also it is prohibited to demonstrate loading nuclear warhead onto an ICBM, for it would constitute an imminent nuclear threat to both military and civilian centers on U.S. soil, among other potential targets. Therefore, when North Korea claimed the September 2016 nuclear test was a missile warhead test, and it “finally examined and confirmed the structure and specific features of movement of a nuclear warhead that has been standardized to be able to be mounted on strategic ballistic rockets”¹⁵⁷, North Korea exerted an imminent nuclear threat to all the civilian centers within the missile’s range, which is morally prohibited in the perspective of Kantian nonideal theory, regardless of whether what North Korea claiming was the truth or not. Furthermore, considering the historical context of 2016, North Korea was not in any imminent danger of going to war with any state, nor is it preventing any war of extermination from happening with the missile warhead test-launch. Therefore, the 2016 North Korean claimed nuclear missile warhead test-launch was immoral in the stance of Kantian nonideal theory.

¹⁵⁷ Farrer et al., 2016.

5. The Duty of Non-Intervention

In *Toward Perpetual Peace*, Kant enumerated the prerequisites for states to enter a status of long-term peace, among which the fifth one stipulates that “no state shall forcibly interfere in the constitution and government of another state”¹⁵⁸ – also known as the duty of non-intervention¹⁵⁹. From numerous scholar’s interpretations and from Kant’s own explication, we could know that this principle is to be abided by irrespective of circumstances, therefore it is a perfect duty.¹⁶⁰ To determine whether this principle is relevant to the topic of this dissertation, we need to answer a few questions first: What is the definition of intervention? What types of intervention are there? Is there any circumstance implied by Kant in which interference does not count as violation of the duty? Is there any ground on which the action of intervention can be justified in Kantian terms? Does any state within the North Korea Nuclear Security Complex fit in such exception? Does any state within said complex violated this duty in dealing with North Korea nuclear issue?

5.1. Conceptualizing Intervention

RJ Vincent attempted to identify the major features of intervention from six component parts – actor, target, the activity itself, the types of intervention, purpose, and context.¹⁶¹ He listed three features that are the most important to distinguish intervention from international political behaviors in general. First is that there are two broad destinations for the activity of intervention: the domestic affairs and external affairs of a state. And no matter which got intervened, the suffering part will be “the authority structure of the state”.¹⁶² Second is coercive interference being a distinguishing feature; coerce can be understood as to compel the sovereign will of another state; coercive interference could be considered as actions taken to prescribe the actions of others. The use or threat of force is sometimes present but not a necessity, which could be used as a guide to the incidence of intervention, with crucial supplements to note that not every case of interference involving a great power and a small power can be automatically identified as coercive interference; and to note that

¹⁵⁸ Kant, 2006 (1795)., p. 70 (AA, 8 :346).

¹⁵⁹ Cavallar, 2001., p. 240.

¹⁶⁰ Kant, 2006 (1795)., p. 71 (AA, 8:347); Jahn, 2005., p. 188.

¹⁶¹ Vincent, 2015., p. 3.

¹⁶² Ibid, pp. 5 – 6.

coercive interference can happen in spheres like international economic relations.¹⁶³ Third feature is that intervention is to be distinguished from war. Intervention is to be seen as an act of war, though sometimes intervention is undertaken for the purpose of avoiding war, therefore it may be a pacific measure which has the possibility of upgrading into a war when resistance is present.¹⁶⁴ What worth noticing is that intervention can be lawful as much as it can be unlawful¹⁶⁵, and also can be moral as much as it can be immoral; lawful or moral intervention should not be excluded from “the class of events called intervention”.¹⁶⁶ Therefore in this dissertation we are trying to determine if there is intervention undertaken by actors in the North Korean Nuclear Security Complex that should be deemed as morally impermissible due to the violation of the duty of nonintervention in Kantian political philosophical terms.

For types of intervention, military intervention may be one, including all types of military aid, and the very presence or display of armed force.¹⁶⁷ Economic intervention could be another type, including aid with strings attached, and conditional contract between developed and underdeveloped states.¹⁶⁸ Jahn mentioned economic means – sanctions or restricted interaction with the intervened – as a prudent measure of interventionism.¹⁶⁹ Political intervention would be the third type, comprises of hostile propaganda disseminated abroad, moral support lent to the revolutionary struggle within another state, refused recognition of an established government, internal affairs of a member-state of the Commonwealth being discussed at a prime minister’s conference by another member.¹⁷⁰

5.2. Cases of Exception and Their Grounds

In the explication paragraph of the Fifth Preliminary Article, Kant indicated that it would be a different circumstance if a state were divided into two parts through internal conflict; each of the parts regards itself independent and claims the whole territory of the original state. In such case, if the conflict is decided, an external state

¹⁶³ Ibid, pp. 7 – 8.

¹⁶⁴ Ibid, pp. 8 – 9.

¹⁶⁵ Ibid, pp. 11 – 12.

¹⁶⁶ Ibid, p. 12.

¹⁶⁷ Ibid, p. 9.

¹⁶⁸ Ibid, pp. 9 – 10.

¹⁶⁹ Jahn, 2005., p. 182.

¹⁷⁰ Vincent, 2015, p. 10.

can assist one of these parts without being charged of violating its duty of non-intervention.¹⁷¹ The reasoning of this thesis lies in the emergence of anarchy in the divided state. Other states no longer have duties towards the original regime once the state loses its government and constitution and relapses into the state of nature.¹⁷² Yet other states still have duties towards the people of the disintegrated state – including the duty of non-intervention – their right to “establish a rightful condition”¹⁷³ for themselves and to “unite into a commonwealth”¹⁷⁴ should not be intervened in any way.

Georg Cavallar pointed out another situation under which a regime is denied a status of a ‘moral person’, which is when the regime is a totalitarian one by modern standards.¹⁷⁵ He argued that even though Kant specified that an imperfect constitution is still better than the state of nature, but if the constitution is so imperfect or non-existent that it makes the situation of the state no different from anarchy, it would have destroyed itself as a moral person. A political system that denies the status of personality to a section of the population would have made the relation between these humans and the rest of the society and the government a state of nature.¹⁷⁶ These humans would have no external obligation to the totalitarian regime, but a right to rebellion with the aim to establish a rightful condition for themselves. Other states would be relieved of any duty towards this regime; they would have duties instead towards the people of this regime.¹⁷⁷ Cavallar suggested along this line of reasoning that any government that initiates acts ‘that shock the moral conscience of mankind’ such as massacres, genocide loses its status of a moral person and thus its right of self-determination. The duty of non-intervention would therefore not apply to it.

Can actions of state intervention be justified on any ground? Can a state’s decision be intervened on any ground? Numerous liberal or democratic peace literature claimed the right of intervention on the ground of protecting human rights or advocating peace can find its roots from the work of Kant.¹⁷⁸ In response to these

¹⁷¹ Kant, 2006 (1795)., p. 70 (AA, 8:346).

¹⁷² Cavallar, 2001., pp. 242-243.

¹⁷³ Ibid, p. 242.

¹⁷⁴ Kant, 1991., p. 170

¹⁷⁵ Cavallar, 2001., p. 240.

¹⁷⁶ Ibid, p. 242.

¹⁷⁷ Ibid.

¹⁷⁸ Cavallar, 2001., p. 231, pp. 240 – 241; Jahn, 2005., p. 178, pp. 180 – 181.

claims, Cavallar argued that Kantian non-ideal theory indicated that Kant sees the distinction among states as a matter of degree rather than kind¹⁷⁹; he does not distinct them as republican and non-republican or liberal and non-liberal in his non-ideal theory¹⁸⁰, the liberal states in modern standards are merely more lawful than the non-liberals, but not more just¹⁸¹; instead, states should be seen as being located along a continuum, which will gradually reform themselves towards a noumenal republic.¹⁸² Therefore, all moral principles should apply equally to “liberal” states as well as the “non-liberal” ones.¹⁸³ Furthermore, the liberal, Western-style democracies are not inherently peaceful¹⁸⁴; the “non-liberal” states do not violate the human rights of their citizens by default.¹⁸⁵ Hence, the claims of intervening non-liberal state to protect human rights or establish a more peaceful society do not stand.

Horn elaborated Kant’s perception on ideal normativity and non-ideal normativity – how states should guide themselves and how they should be seen in non-ideal normativity. Horn accorded with Cavallar, suggesting that Kant sees injustice as part of human’s nature is possible to be opt off through reform via a well-organised state¹⁸⁶; the sovereign is a morally sensitive person, who will remedy normative deficits of the existing legal order by looking towards natural law and the idea of reason.¹⁸⁷ An unjust situation in public legal affairs should be left to persist for as long as it takes for it to dissolve itself or for it to be changed through non-violent means by way of moderate reforms. And for this a non-ideal normativity is required¹⁸⁸; moral progress through law is a strong form of non-ideal normativity.¹⁸⁹

Jahn further argued that interaction with one state without its consent constitute intervention; and justification of intervention without consent adds up to justification of imperialist policies.¹⁹⁰ He suggested that what some liberal interpreters of Kant’s work advocate economic means – such as sanctions or restricted interaction with nonliberal states – as a means of intervention instead of military means is an explicit

¹⁷⁹ Cavallar, 2001., p. 232.

¹⁸⁰ Ibid, p. 229, 232, 242.

¹⁸¹ Ibid, p. 242.

¹⁸² Ibid, p. 232, 235.

¹⁸³ Ibid, p. 232.

¹⁸⁴ Ibid, p. 230

¹⁸⁵ Ibid, p. 240.

¹⁸⁶ Horn, 2016., pp. 102 – 103, p. 107.

¹⁸⁷ Ibid, p. 108.

¹⁸⁸ Ibid, p. 109.

¹⁸⁹ Ibid, p. 107.

¹⁹⁰ Jahn, 2005., p. 178.

aim to change the constitution of nonliberal states, thus clearly implies the denial of rights of non-intervention for the nonliberal states¹⁹¹; and not only are the contemporary liberal approaches not representation and derivation from Kant's principle, they are actually advocating the diametrical opposite of what Kantian moral laws put forward.¹⁹²

From both circumstances discussed above, we could see one key element of the non-applicable condition of the duty of nonintervention – the emergence of state of nature. As Kant indicated at the beginning of elaboration of the Definitive Articles of Perpetual Peace, the state of nature is a state of war that involves a constant threat of outbreak of hostilities. It is the opposite of the state of peace and the state of peace must be established for achieving perpetual peace among states.¹⁹³ Although the state of peace should be strived to be restored, it nonetheless does not give right to any state to intervene the right of self-determination of others, for it is unjustified to fight one violation of rights with another one.¹⁹⁴ According to the law of permissibility¹⁹⁵, an unjust situation can be let to persist for a while for it to dissolve itself or for it to be changed through moderate reform.¹⁹⁶ These injustice situations are only provisional, not peremptory; it is possible to modify them gradually by a legal order.¹⁹⁷ Reforms should not be hasty and be used as an excuse to exercise a greater oppression; it should be in accordance with the ideal of public rights under the existing circumstances, and to be used to bring about a lawful constitution, thus restoring the state of peace.¹⁹⁸ External assistance could be lent out to facilitate the establishment of the constitution, but never to force or manipulate the will of the people.¹⁹⁹ Therefore unless there are extreme incidents that signify the non-existence of constitution and the de facto state of nature – that is the incidents of massacre or genocide – temporary unjust situation of a state shall not be used by other states as the ground for violation of its right of non-intervention.

¹⁹¹ Ibid, p. 182, p. 185.

¹⁹² Ibid, pp. 186 – 189.

¹⁹³ Kant, 2006 (1795)., p. 72 – 73 (AA, 8:348-349); Kant, 1991., p. 98.

¹⁹⁴ Cavallar, 2001., p. 241.

¹⁹⁵ Kant, 2006 (1795)., p. 71 - 72 footnote (AA, 8:347n).

¹⁹⁶ Horn, 2016., p. 109.

¹⁹⁷ Ibid, p. 107.

¹⁹⁸ Kant, 2006 (1795)., p. 97 footnote (AA, 8:373, fn); also see Horn, 2016., p. 108.

¹⁹⁹ Kant, 2006 (1795)., p. 70 (AA, 8:346); Cavallar, 2001., p. 243.

5.3. North Korean Nuclear Security Complex and The Duty of Non-Intervention

From the above we could know that the duty of non-intervention is an unconditional one in Kantian terms; except for in rare cases the duty is non-applicable to the regime; wherever it is applicable, it shall not be violated on any ground. In North Korean Nuclear Security Complex, is there any practice that violates this duty? In order to answer this question we need to first examine whether there is any state within this complex on which the duty is non-applicable.

The Fifth Preliminary Article of PP dictates when a state is divided into two or more parts during an internal conflict; after this conflict is decided, external states can assist one of these parts with rehabilitation, reconstruction, and establishing a new constitution without being charged of violation of the duty of non-intervention.²⁰⁰ In this sense, the United States and China did not violate the duty by taking side and assisting rehabilitation of South Korea and North Korea respectively. In 1991, both the Republic of Korea (South Korea) and the Democratic People's Republic of Korea (North Korea) were simultaneously admitted to the United Nations; since then they should be admitted as independent sovereign states and any attempt from other sovereign states to interact with either or both of these two states without their consent would be a direct violation of the duty of non-intervention.

For the second type of exception, North Korea was regarded as a totalitarian regime by some, yet it has a legitimate constitution – imperfect as it might be to some but not so imperfect that it is non-existential. There is no confirmed massacre or genocide in North Korea; temporary unjust situation should be left to dissolve by itself or reform by the North Koreans' own will. Therefore by the standard of Kantian nonideal theory, North Korea does not belong to either of the exceptions in which the right of non-intervention does not apply, hence it shall boast its right of non-intervention like the rest of the states within the Complex.

It was argued in last chapter, that North Korean acquisition of nuclear weapon under its historical background is morally permitted in the perspective of Kantian nonideal theory. As North Korea has taken on developing nuclear capability as a national policy, it has taken nuclear capability as a means of national defence; and exerting nuclear deterrence to avoid being coerced and being used as a means.

²⁰⁰ Kant, 2006 (1795)., p. 70 (AA, 8:346).

Therefore, all practices taken by other states or international organizations to interfere with such national policy should be scrutinized with a moral assessment to determine whether they are in violation of North Korean right of non-intervention. It is important to note that the violation of morality committed by North Korean does not excuse the violation of its right of non-intervention, as Kantian morality is not moral consequentialism.

Nonetheless, there is a period of exception when North Korea acceded to the Treaty on the Non-Proliferation of Nuclear Weapons (commonly known as the NPT) in late 1985, and before it legally withdrew from the NPT at the beginning of 2003. By signing the Treaty, North Korea is considered to concede to all the restrictions and requirements stipulated in the Treaty regarding nuclear nonproliferation. Any violation of the Treaty can be used as legal ground for punitive actions towards North Korea.

Article III.4 of the Treaty stipulated that a non-nuclear-weapon state acceding to the Treaty must bring into force a comprehensive safeguards agreement with the International Atomic Energy Agency (IAEA) not later than 18 months after its accession.²⁰¹ North Korea did not enact its safeguards agreement until April 1992, hence the first and unvarnished violation. Following this, the IAEA had discovered various discrepancies between their inspection and what North Korea had presented in its Initial Report to the IAEA. Discrepancies include number and functionality of key buildings in nuclear complex, and amount and content of plutonium extracted from used fuel rods.²⁰² In order to clarify these mismatches, an IAEA special inspection was demanded on North Korea, which got rejected promptly. In May 1994, North Korea discharged used nuclear fuel in an unstructured way against IAEA's suggestion, making any historical analysis of the core of the reactor impossible.²⁰³ In June 1994, the IAEA decided to suspend all IAEA technical assistance to North Korea which responded three days later with a notice of withdrawal from the Agency.²⁰⁴ October 1994, US-DPRK Agreed Framework was signed which renewed stipulations regarding non-proliferation and conformity of IAEA safeguards agreement for North Korea. In November 1994, the United Nations Security Council instructed the IAEA

²⁰¹ Fisher, 1997., p. 1.

²⁰² Ibid.

²⁰³ Ibid., p. 2.

²⁰⁴ Ibid.

to enforce the tasks assigned to it in the Agreed Framework. Hence, the above was North Korea's violation against the NPT and safeguards agreement signed according to the NPT during late 1985 to late 1994.

In the IAEA report regarding North Korea's violation of its NPT safeguards agreement, Fisher claimed that until the end of 1995, the IAEA was still not able to verify the completeness of the DPRK's Initial Report and therefore the DPRK was in formal breach of its safeguards agreement.²⁰⁵ However as the Agreed Framework stipulated that the DPRK "will come into full compliance with its safeguards agreement", when a significant portion of the LWR project undertaken by US led Korean Peninsula Energy Development Organization (KEDO) was completed but only "before delivery of key nuclear components".²⁰⁶ And the IAEA was asked to follow the Agreed Framework regarding North Korean nuclear inspection by the UNSC. As we knew from previous sections about Agreed Framework and KEDO, the construction of the LWR project had never gotten to the step of near completion. Whether the stipulation in the Agreed Framework regarding safeguards agreement compliance supersedes the original safeguards agreement is therefore controversial. Nonetheless, North Korea's violation on the Article III of NPT and safeguards agreement from 1992 to mid-1994 was concrete. Therefore, any punitive actions done to North Korea regarding such violation – by either and/or both states within the Complex and international organizations like the UN – cannot be assessed as morally impermissible based on the ground of violation of the duty of non-intervention.

As the implementation of the Agreed Framework was hindered largely by the US Congress among other factors, frustration mounted on North Korean side led to a ballistic missile test-launch in August 1998. Though missile test-launch is not banned in the NPT but is considered closely related to nuclear proliferation. After that it was around the time that North Korea secretly acquired uranium enrichment technologies and centrifuges from A.Q. Khan, which broke both the Agreed Framework and the NPT. Above are North Korea's major breach against the NPT and its safeguards agreement, and the Agreed Framework. Any punitive actions based on these violations should not be determined morally impermissible for the reason of violation of North Korea's right of non-intervention. However, even the violation of NPT does

²⁰⁵ Ibid., p. 5.

²⁰⁶ Ibid., p. 3.

not make the violation of North Korea's right of non-intervention morally permitted. Punitive actions employed based on North Korea's violation of NPT and its safeguard agreement should above all be moral, which means respect all rights of North Korea including the right of non-intervention. Further, employing punishment on North Korea's violation of morality is morally proscribed to be used as a means or excuse to induce color revolution, to instigate peaceful evolution, or to practice any activities related to regime changing and removal of state key figures; as these actions are violations of right of non-intervention and/or are included in the actions listed by Kant in PP which would destroy mutual trust between states to beyond repair.

6. The Obligation to Join a Union of States

From previous chapters of interpretation of PP and MM, we know that Kant contends that it is states' obligation to leave the state of nature and join a federal union of states. However it is equally important to note that states shall join this league voluntarily and autonomously; such union shall not be established with coercive law enforcement.

The voluntariness of such union is the key in Kantian perspective, according to Pauline Kleingeld's interpretation. Kleingeld argues that establishing a coercive state of states equals granting states a right to force other states into a union with coercive powers, strong states or group of states would end up setting the terms, subjecting other states to its laws and interests. Such despotism would quash any already existing rights that are secured internally by the subjected states, hence severely violating lawful freedom.²⁰⁷ Such state of states may be governed by laws that are inconsistent with the autonomy of the member states, and might destroy the republican institutions which was established internally in the member states.²⁰⁸ Kleingeld further depicted Kant's vision of union of states by emphasizing that states that joined should not fuse together; as in Kant's view, the initial separation of states reinforced by differences in language and religion, furthers the internal development within states – referred by Kant as “culture” – and cultural development within states will, Kant expects, lead to

²⁰⁷ Kleingeld, 2004., p. 308.

²⁰⁸ Ibid., pp. 308 – 309.

greater unanimity on principles.²⁰⁹

6.1. North Korean Governing Strategy and the Obligation to Join A Union

North Korea in Kim Il Sung time was firmly adherent to Kim's unique political ideology – the *Juche* ideology, which was developed as a Korean version of Marxism-Leninism that supposedly harmonized with the realities of the Korean situation.²¹⁰ *Juche* commonly referred to as self-reliance; and Kim elevated this concept to a philosophical dogma to be strictly followed.²¹¹ *Juche*, emanated from North Korea's militant nationalism, comprises four main concepts – self-determination on ideology, independence on politics, self-reliance on economy, and self-defence on military affairs. *Juche* was a declaration of political independence from North Korea's two then communist sponsors – the Soviet Union and China; it was also a symbol for North Korea's autarky.²¹²

During 1970s and 1980s, North Korean economy became increasingly stagnant, which was caused by the innate weaknesses of *Juche* ideology and the rigid employment of the *Juche* philosophy. North Korea was isolated from the international economy by *Juche* ideology for too long that caused an irreparable technological lag. Even when North Korea tried to induce limited foreign capital investment in the form of credit, its economy was not prepared to receive foreign capital and technology; therefore it later kept failing in discharging its debt obligations and became a chronic debtor state.²¹³ However, all these failure did not thwart the North Koreans from believing this ideology. In 1977, references to Marxism-Leninism were replaced by *Juche* in the North Korean constitution. And in 1992, after the dissolution of the Soviet Union, North Korean constitution was revised to substitute *Juche* for Marxism-Leninism as a guiding principle of politics.²¹⁴

Upon Kim Il Sung's death in 1994, his son Kim Jong Il took control of his office. Carefully groomed to be the sole successor of the regime by his father since early 1980s, Kim Jong Il was a firm believer of the *Juche* ideology as well – he continued

²⁰⁹ Ibid., p. 313.

²¹⁰ Kim, 2012., pp. 455 – 456.

²¹¹ Ibid., p. 456.

²¹² Ibid.

²¹³ Ibid., p. 505.

²¹⁴ Ibid., p. 456.

to fully enforce *Juche* philosophy in all aspects of regime governing, and enhanced it by implementing the military-first policy – the Songun policy. However, the steeply declining economy caused by centrally planned economy, extravagant military spending, and droughts and floods pushed Kim Jong Il to make some reforms – abolishing state-managed rationing system, adjusting foreign exchange rate, freeing currency exchange. In 2002, North Korea even established the Sinuiju Special District as North Korea's water-testing in international trading with special economic district. Yet such reform attempt did not last long; in 2005, the North Korean government announced the reviving of the Public Distribution System, under which all major food items were distributed by the state. It also terminated most international humanitarian assistance operations in the country, calling for development assistance only and under restrictions. Firm political control under the guidance of *Juche* ideology remains, inhibiting the loosening of economic regulations throughout the first decade of the 21st century.²¹⁵

We could see North Korea chose autarky policies for state governing strategies in the time of Kim Il Sung and Kim Jong Il. With self-determination, independence, self-reliance, and self-defence written in constitution as guiding principles, North Korea showed little desire to open up itself and join the international society, especially in political, economic, and military aspects. It was trying to exclude itself as much as possible from full-scale globalization; trying to close the country up and rely on itself as much as possible. It would be hard to imagine the current North Korea actively and voluntarily joining any union of states, except for normalizing relations with the United States. Although it is North Korea's obligation and immediate duty to join a union of state, like the NPT, for the further realization of peace and perpetual peace; its decision of joining cannot be a forced one.

6.2. The Non-Proliferation Treaty

As a union of states that aims at control and eventually solve the global nuclear proliferation problem, the NPT – at least when it was initialed – is to be considered one of the leagues of states that Kant refers to as *congress*, which is the middle ground stage the world needs to go through before full realization of perpetual peace.

²¹⁵ Ibid., pp. 555 – 559.

All states are obligated to join such *congress*.

Article X Section One of the Treaty stipulated that each sovereign party that acceded the Treaty have the right to withdraw if it decides that extraordinary events have jeopardized the supreme interests of its country. In a detailed report from the Korean Central News Agency (KCNA) explaining North Korea's withdrawal decision, North Korea indicated the extraordinary events to be the full breach on the U.S. side of the DPRK-US Agreed Framework, the annually conducted US-POK military exercises along with continuous build-up of the armed forces of nuclear attacks in Northeast Asia, and the triggering events of Bush's unipolar foreign policy.²¹⁶ With the branding of "Axis of Evil" and the subsequent invasion of Iraq, North Korea's perception of threat of war is not unfounded.

Since establishment, the NPT has suffered from non-compliance – some of them constructed the possibility of material breach and/or institutional subversion of the regime which might lead to the questioning or even obsolete of the viability of the regime. Member non-compliance includes Article II violations by North Korea, Iran and others that have sought nuclear weapons capabilities.²¹⁷ According to Doyle, it also includes the political refusal to enter into good faith negotiations toward complete nuclear disarmament by the five *de jure* nuclear states, which at least constructs a failure to concerting efforts toward realization of Article VI of the Treaty.²¹⁸ The possibilities to address the misbehavior of the five nuclear powers are either highly improbable – for example self-imposed sanctions – or highly controversial – like threats from non-nuclear states to dissolve the regime through collective withdrawal, and violations of the Treaty in the name of state survival or security.²¹⁹ Doyle contended that failure to address such non-compliance may lead to plausible infer that the NPT has been diverted away from an arms control and disarmament regime that represented the general will of the founding parties toward an arms control regime that serves the exclusive national interests of the five NWSs. Continue compliance with the Treaty would no longer serve the purpose of nonproliferation as a means to an eventual nuclear disarmament,; instead it would reinforces a different

²¹⁶ KCNA., 2003.

²¹⁷ Doyle, 2009., p. 137.

²¹⁸ Ibid., p. 139.

²¹⁹ Ibid., p. 140.

institutional purpose, namely ‘nuclear apartheid’.²²⁰ Furthermore, the exports of nuclear technology and materials from the nuclear weapons states to some non-nuclear weapon states has caused a fundamental change in the nuclear trade market by stimulating the beginnings of a second-tier proliferation network. Therefore, although North Korea has substantial violation of the Treaty articles, it does not nullify the legitimacy of its decision to withdraw from the NPT.²²¹ The implication of the potential breach and/or institutional subversion of the NPT regime makes it a questionable regime to rejoin for the North Koreans to pledge their desire for global nuclear disarmament.

6.3. The US-DPRK Relations Normalization

The normalization of the US-DPRK relation maybe the only league of nations the North Korea is willing to join at this moment. Compared to the current state of nature between the United States and North Korea, the normalization of relation would mean a commitment from both sides on ceasing hostility and promoting peaceful coexistence, hence a *congress* in Kantian term. It is obligated for both the U.S. and DPRK to join such congress so that it eventually evolves into a universal federal union.

Whether they have enough mutual trust to join such congress is one of the determining factors for the establishment of this congress. This congress is also the key to solve the Korean Peninsula nuclear issue, as normalization of relations between the United States and North Korea alleviates tension between both sides and nullifies the reason for heavy weaponry deployment in the region. As the grounding for military deployment and nuclear capability development ceases to exist, any nuclear proliferation activity would be considered aggressive instead of self-defence.

Historical evidence suggests currently the United States and North Korea may not have enough mutual trust to enter such union. After the collapse of Agreed Framework and the speech of “Axis of Evil”, relations between the two states took a nose dive and nuclear proliferation situation has aggravated. Six-party Talks casted positive effects on both but only in a slow pace. Six-party Talks involves more parties

²²⁰ Ibid.

²²¹ Ibid., p. 143.

than bilateral negotiations, there are intrinsic traits exist in multilateral negotiations that may cause problems. For example, wide divergence might exist among members of the Talks regarding their perceptions about what stage they believe the negotiations have entered.²²² Leaving such gap(s) unsolved and growing would lead to deadlock or even break-down of the negotiation. Different standpoints and divergent priorities of parties lead to unnecessary linkage of issues hence hampers the negotiation progress. Division in perceptions of key players regarding crucial issues might hinder further on the negotiation – for Six-party Talks, the perception division between Washington and Beijing regarding the leverage China has over North Korea is important.²²³ The divergence in multiple aspects in the Six-party Talks maybe the main reason for its lag in achieving substantial results.

But the most significant issue with the Six-party Talks, same as with any other negotiation attempt to dissolve the North Korean nuclear crisis, is the dismissal of direct pegging of the nuclear crisis with US-DPRK relations normalization. Until the normalization of relations between these two states, North Korean nuclear issue will remain unsolved, and nuclear disarmament of Korean Peninsula unachieved.

7. Conclusion

The main purpose of this dissertation is to establish what Kantian non-ideal theory is, how it can be used as philosophical guidance in international political field, and its application on the North Korean Nuclear Security Complex. There is little doubt that our world is in nonideal circumstances under philosophical standards. As Adam Swift suggested, a sophisticated philosophical system should not only be applicable in ideal circumstances, but also shed light on navigation of human activities in nonideal circumstances. Furthermore, in nonideal circumstances, not only should such system be sufficient to be used for analyzing different values at hand; it should provide guidelines on prioritizing those values for practical application.

Kantian philosophy is such a theoretical system – within one moral system exists two layers of theories that governing two worlds respectively – one ideal world with only perfectly just situations, in which everyone acts justly and rationally, and all

²²² Park, 2005., pp. 87 – 88.

²²³ Ibid., p. 89.

conditions of all aspects allow the realization of full justice; one nonideal world with unjust situations, non-compliance, punishment, war, and conditions and circumstances that make accomplishing comprehensive justice impossible. Kantian nonideal theory is the layer of theories which manages the nonideal world – it is a weaker version of Kantian ideal normativity yet shares the same origin; it applies in nonideal circumstances to bring the world closer to the supreme objectives of humanity.

T.E Doyle's application of Kantian nonideal theory on Iranian Proliferation Complex inspired my analysis with North Korean Nuclear Security Complex employing the same theory. The right of self-defence is one of the primary arguments in both Doyle's work and this dissertation. However the individual right of self-defence does not necessarily equal the right of national defence – the association and relations between the two are to be deduced. It is problematic to make the domestic analogies of individual right of self-defence a default prerequisite.

Reading Kant's work we could know that individuals as citizens of a state have the right to wield their rights of self-defence collectively to prevent themselves from external attacks; they are permitted to form armies, acquire weapons, and employ other necessary preparations for such collective self-defence. Therefore, it is morally permitted for states to defend themselves against attacks, and it is considered the collective wielding of individual self-defence by all citizens of the state. And lying as national defence means is morally permitted as well in the stance of Kantian nonideal theory when dealing with a deceiver. As nuclear weapon states and de facto nuclear weapon states are deceiving in the form of nuclear deterrence by owning nuclear weapons, it is morally permitted for North Korea to deceive in form of nuclear deterrence so that it would not be used as a means by other deceivers. As individual right of self-defence is best seen as a reciprocal relation. So is the national defence right between sovereign states. The extent of national defence should be limited in an area between minimum effectiveness to the extent of the perpetrator's offense.

One of the prerequisites for states to have the right to go to war and prepare for war is that said state should be in the state of nature. Doyle suggested current international relations is in a state of nature, which is an idea that requires more debates and analysis. The alternative of state of nature and the necessary state for perpetual peace in Kant's work is some kind of league of nations which I proposed to be identified as

a federal union of states, which is a multi-state political form that has power division between two levels of government with equal status. According to Kant's work and multiple interpretation of scholars, I argued that our current world is not in the full realization of perpetual peace and one universal federal union of states; but it is not in a complete state of nature as well – it is in a partial state of nature, which is considered an in-between stage of a gradual development from international state of nature to universal federal union of states. Partial state of nature means that some states have already joined the associations of states which will eventually develop into the universal union, but some other have not yet joined. Therefore, the rights of states depend on the related status a state is in with the others – for the states that joined the union, they are obligated to keep the peace among the members of the union, and they have the right to go to war and prepare for war with a non-member state; for the non-member states, they have the right to go to war with both members and non-members, and they are obligated to willingly join the union.

National defence can only be invoked when the following conditions are met: the defender must have substantial evidence of the threat of aggression made on it and/or substantial evidence indicating the increase of the offender's power is menacing; no act of hostility is permitted if it would destruct mutual trust for states in entering perpetual peace in the future.

For moral assessment of acquiring and stockpiling nuclear weapons, it is morally obligated for the acquirer to take necessary precautions and acquire necessary technologies to prevent accidental or unauthorized triggering of the weapons. In the process of acquisition, handling, storing and transporting, and deploying nuclear weapons, it would render the process morally impermissible if any kind of direct harm was done to or will inevitably be done to a human life of whom did not give rational consent to sacrifice his/her life for said process, or there is no reason to believe that s/he will give such consent.

Based on domestic analogies of individual right of self-defence, and the reciprocal nature of such right, nuclear deterrence exertion should follow these rules for moral legitimacy: it is morally permissive to exert nuclear strategic deterrence generally – meaning not posing threat to any specific target – when one is under specific-targeted nuclear deterrence. When such deterrence fails and deterrer is under nuclear attacks, it

is permissible to carry out deterrence only to military targets of the offender. It is permissible to exert specific nuclear deterrence to military targets, meaning aiming at them with nuclear weapon, and carry out deterrence when it fails. It is morally prohibited to attack civilian target with nuclear weapon at any point. It is morally permitted to threaten nuclear deterrence to civilian targets only when the deterrer genuinely believes it is the only way to stop a war of extermination. On nuclear aspirant's activities to increase credibility of nuclear deterrence, they are permitted if the aspirant only intends them as a means of deterrence.

Assessing North Korean related practice according to the above moral principles, we could know that North Korea's nuclear capability is so far within the morally permissive scale. All the nuclear test explosions were morally permitted except for the 2016 claimed nuclear missile warhead test-launch.

Besides the right of self-defence, the duty of non-intervention is another Kantian nonideal argument that can be based on for the moral assessment of the practice of states in the North Korean Nuclear Security Complex. There are three distinctive features of intervention: domestic affairs and external affairs as two destinations for intervention; the compelling of the sovereign will of the interfered state; intervention is to be distinguished from war. There are two types of exception when interfering another country's affairs would not be considered violation of the duty; in the situation of the Complex, none of the states within belongs to either type. In contemporary international relations, interference does not necessarily involve military force or threat – economic interference such as sanctions or restricted interaction with the targeted state are also commonly used for intervention. As North Korea belongs to neither cases of exception where the right of non-intervention does not apply, all practices taken by other states or international organizations aiming to punish North Korea's attempts to acquiring nuclear military capability are to be assessed for potential violation of the duty of non-intervention.

In 1985, North Korea acceded to the NPT, withdrew in 2003. Within this period, any punitive action done to North Korea regarding its violation of the NPT cannot be assessed as morally impermissible based on the ground of violation of the duty of non-intervention. North Korea's 2016 claimed nuclear missile warhead test-launch was also considered immoral, hence any punitive action done because of it also

cannot be assessed as morally impermissible using non-intervention as ground.

Kant states in his work that it is an obligation and immediate duty for states to join the universal federal union of states, yet it is crucial that the decision of joining should be a voluntary and autonomous one. Undoubtedly North Korea has the obligation to join a union of states, however judging from its continuous governing strategy and state ideology, it is unlikely for North Korea to willingly and actively commit to joining any union of states except for the relation normalization with the United States. The NPT has suffered potential institutional subversion which would seriously undermine the viability of the Treaty regarding facilitating nonproliferation cause and representing the unanimous will of global nuclear disarmament of all the signatories. Therefore it is questionable that North Korea should rejoin such treaty should it have the desire to express commitment to nuclear disarmament.

The US-DPRK relation normalization maybe the key to eventual nuclear disarmament in the Korean Peninsula. It is obligated for both the U.S. and North Korea to join such union, yet the mutual trust between them currently may not be sufficient to support such decision. The Six-party Talks had helped significantly in non-proliferation issue in the Peninsula, yet failing to directly peg the nuclear issue with US-DPRK relations normalization is hindering and will continue to hinder the disarmament progress in the region.

Kantian nonideal theory is not political realism. On the contrary, it holds highest perpetual peace, same as Kantian ideal theory. Yet peace loving does not equal unilateral disarmament; for that might lead to catastrophic consequences in both reality and morality – becoming or being forced into being capitulationist would be one of the consequences in reality; losing one's freewill and becoming a means instead of an end would be one of the moral ones. Even though there is currently no international war, the gloomy cloud of Iraq War and the lingering smell of gunpower from the clash between the U.S. and Iran over the death of Iranian military leader remind us just how close international wars and proxy wars are away from us. Amid the current situation with the U.S. and its allies, acquiring nuclear military capability might be the best chance for North Korea to stay away from external political interference and the danger of getting involved into wars. Global nuclear disarmament does not come from unilateral disarmament of several states, or the physical denial

and technological secrecy of nuclear military capability; it should come from a systematic change of mainstream nuclear mindset, together with the change of current non-proliferation institution – devaluing, de-alerting, and delegitimizing; and eventually complete disarmament.

Abbreviations

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| AA | Immanuel Kant, <i>Gesammelte Schriften</i> (generally called <i>Akademieausgabe</i> since first published by the Prussian Academy of Sciences), Berlin, 1900ff. ²²⁴ |
| ASEAN | Association of Southeast Asian Nations |
| DPRK | Democratic People's Republic of Korea |
| EU | European Union |
| IAEA | International Atomic Energy Agency |
| ICBM | Intercontinental-range ballistic missiles |
| IEEPA | International Emergency Economic Powers Act 1977 |
| IRBM | Intermediate-range ballistic missiles |
| KCNA | Korean Central News Agency |
| KEDO | Korean Peninsula Energy Development Organization |
| LWR | Light water reactor |
| MM | Immanuel Kant, <i>The Metaphysics of Morals</i> |
| MRBM | Medium-range ballistic missiles |
| NPT | Treaty on the Non-Proliferation of Nuclear Weapons |
| PP | Immanuel Kant, <i>Toward Perpetual Peace: A Philosophical Sketch</i> |
| POW/MIA | prisoner of war/missing in action |
| TWEA | Trading with the Enemy Act 1917 |
| UN | United Nations |
| UNSC | United Nations Security Council |
| USSR | Union of Soviet Socialist Republics |

²²⁴ Kant, 1991., p. xv.

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